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JAMES H. McKENNEY
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Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1086.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,

vs.

SAMUEL B. THOMAS, SHERIFF AND TAX COLLECTOR OF HINDS COUNTY, AND OTHERS.

ARGUMENT OF JAMES FENTRESS, OF COUNSEL FOR PLAINTIFF.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

1. The State of Mississippi, in February, 1882, granted a charter to plaintiff in error, containing an exemption from taxation for a period therein prescribed. Under Acts subsequently passed, the State and counties, by their proper officers, in 1888, levy taxes and burdens on plaintiff's railroad, claiming that the same is now subject to taxation.

The plaintiff in error claims that the imposition of said taxes and burdens before the expiration of the period of exemption is the violation of the obligation of said charter contract, and by a bill in chancery obtained an injunction.

The chief question in this case may be accurately stated, as follows: *When*, under the terms of said charter, may the State levy taxes on said railroad?

The defendant in error says she may do so now, before the period of exemption has expired. The one says taxation first, exemption afterwards; the other says exemption precedes taxation, and that, by the terms of the charter, the time fixed *when* the State *may* tax is "when the period of exemption herein prescribed shall "have expired."

It is not necessary, so far as this case is concerned, for the court to modify, or the counsel to criticise, those extreme cases where courts, in the effort to avoid the supposed bad effects of ill-considered legislation, have adopted a different rule of construction for statutes and statutory contracts granting exemptions, etc., from that

adopted in construing statutes and statutory contracts on other subjects.

It, however, seems plain to us that the same rules of construction should be applied in ascertaining the intention of the parties and what they agreed to in this case as are applied to contracts on other subjects; unless, indeed, we assume that the Judicial Department of the Government may, in this indirect, though it seems to us more dangerous way, assume the guardianship of the legislative department.

There is no practical difference in a court holding one statute or statutory contract to be valid, and another invalid, simply because the court deems the one politic and the other impolitic, and a court applying different rules of construction, by which one statute is made effective and another defeated, simply because the subject of one is the grant of land, and the subject of the other a grant of exemption from taxation.

The theory upon which our National and State Government is founded explicitly upsets such supervisory power, by declaring that the legal and legislative departments shall be separate and independent.

Article 3, Sections 1 and 2, of the Constitution of Mississippi. Article 1, Section 1, and Article 3, Constitution of the United States.

Of course, if the act of the legislature is in violation of some constitutional provision, it is the duty of courts so to declare, and that is the end of it. But, if the legislature had the right to legislate on the subject, the right to make the grant or contract by statute, the meaning of said grant or contract, the intention of the legislature making the grant or contract, the mind of the parties entering into the contract cannot safely—nor in accordance with our theory of government—be changed by the courts applying one

rule of construction to one contract and another rule of construction as to another contract.

If a State, by acts of its legislature, makes two contracts, the terms of each being identical, though the subject of the one is exemption from taxation of a particular work, and the subject of the other a bonus, or amount of money contracted to be paid, and the rules created by the courts require in one case that the intention of the State as to the exemption contract shall be shown beyond *a reasonable doubt*, and as to the other the same rule as to all other contracts, to wit: the ascertainment of what the parties agreed to as determined by mere preponderance—we have reached a result not only unfair to the contracting parties, but in the teeth of the spirit and letter of our fundamental laws; which, so far from vesting in the legal department any power over the *policies* of the State, have vested such powers in a separate and independent branch of the government.

We conclude therefore that the extreme rule contended for by defendants in error is not sound law, and that the charter contract in this case should be interpreted and construed by the same rules as apply to contracts between individuals, or between states where the subject matter is not exemption from taxes.

It may be that the legislative department stands in need of such arbitrary and unwritten control, and it is conceded that it sometimes makes grievous mistakes in shaping and directing the policies of the State, but our contention is, that this control cannot under our system be exercised by the courts.

2. But let us try the extremest rule of construction, to wit: Must be "expressed in terms too plain to be mistaken," "a reasonable doubt * * * must be resolved in favor of the State." Now, under this rule, we ask the question: *When* may the property be taxed? *When* shall taxation begin? The answer is in the words of the charter, Section 8: "*And when the period of*

"*exemption herein prescribed shall have expired*, the property of "said railroad may be taxed," etc.

The real question in this case is, *when* may the property be taxed? The defendant in error says it may be taxed before the exemption has expired. They admit that the period of exemption therein prescribed has not expired; indeed, they claim it has not begun.

When may this property be taxed? The charter answers, "it "may be taxed *when* the period of exemption herein prescribed "shall have expired." Is not this an explicit answer? Is it not too plain to be mistaken?

The whole controversy between us lies here. They say this property may be taxed now, and they have assessed and attempted to collect such taxes. We say, no, it is not subject to tax until the period of exemption prescribed in the charter has expired, and it has not yet expired, and therefore we enjoin the collection of said taxes.

3. That this is the true solution of the issue in this case, is further shown by the fact that the State undertakes as a part of this charter contract to "make *certain* in advance of such investment "and as an inducement and consideration therefor, the *taxes and* "*burdens* which this State *will and will not* impose thereon."

There are to be no presumptions as to what taxes will be imposed—nothing left to inference or construction; but the State agrees to make *certain*, before investment, this tax matter. So now we look to the contract to see *when* the property may be taxed, and we find that the State has made it certain by contracting that, "*When* the period of exemption herein prescribed shall have *ex*- "*pired* the property of said railroad *may be taxed*."

Has the exemption expired? No one claims that it has. So we see no escape from the conclusion that any tax levied prior to the expiration of the term of exemption is in violation of the charter contract.

4. The counsel for defendants in error devote most of their time to a discussion of whether the period of exemption is twenty years or twenty-five years, or a movable date between these; but it seems to us immaterial in this controversy whether the one or the other is the period of exemption, as neither has expired, and the authority to tax begins after the expiration of the period of exemption.

If, therefore, it is agreed that neither period had expired when the taxes enjoined in this suit were levied, it is certain, if this contract is upheld, that the said levy of taxes is a violation of said contract.

5. So, with the argument and assumption of counsel for defendants in error, that the State's chief object was to secure an early completion to the Mississippi river, or that one of the chief objects sought by the State was the completion of a railroad to the Mississippi river (all of which has no foundation in fact, as will be hereafter shown). But suppose it was true, how can any such fact affect or change the *express* agreement that the State should make *plain* what taxes and burdens she would and would not impose, and the fact that she then declares that "*when* the period of exemption "herein prescribed *shall have expired*, the property of said railroad "*may be taxed*," etc., unless they can show that such exemption had expired?

In short, all the ingenious argument of said counsel can amount to no more than showing that the extreme period of exemption may—or would, in fact—be shortened, unless, indeed, they can upset the whole contract by inserting some such words as follows: "But the exemption from taxation shall not begin until after the "company has completed a railroad to the Mississippi river." And yet, with even such an explicit declaration, the whole sentence in said charter declaring "*when*" the property may be taxed, would have to be stricken out, or it would not be plain.

No play on words or assertion of the supposed *intentions* of the State can obscure the *fact* that she agreed to make the tax matter

plain, and that she did fix the time when the property of plaintiff in error may be taxed, and that the time so fixed is after the "period of exemption herein prescribed shall have expired."

If, therefore, the period therein fixed has not expired, any ingenious shortening of said period, or discussion of the intention of the State as to terminus, etc., does not affect the issue in this case, which is, that these taxes were levied before the expiration of the period prescribed, and that consequently such levy is a violation of the obligation of this charter contract.

6. The charter in this case was approved on February 17, 1882, and was at once accepted, and work begun. Forty-five miles of railroad were completed under it, and opened for traffic in about two years. One hundred and forty miles of railroad were completed and in operation in a little over four years from the date of the charter. (Record, page 2.)

No taxes were claimed by the State or counties for the years 1882–3–4–5–6–7—six years. In 1884 there were forty-five miles of completed road; in 1886 there were one hundred and forty miles. Indeed, by the terms of the second section of the charter, the company was required to file in the office of the Secretary of State of Mississippi a statement from time to time, as the *lines were located*. The State and county authorities could not have been ignorant of this property being in existence and operation, and yet none of said authorities attempted to assess any part of it for taxation except the compress of the company at Yazoo City, it being expressly excepted from the exemption clause in Section 8, to wit: "not to include compresses and oil mills." This state of things can be explained on no other hypothesis than that the *practical construction* of the State and county authorities was, that the railroad was exempt from taxation.

Personal property of some kinds may be concealed and escape the tax assessor's eye; but here even the record of location was required to be filed, and here was 140 miles of railroad in operation

day after day, and no claim on the part of the State nor of the counties that it should be assessed for taxation.

Indeed, this new theory was not heard of until after the opinion of this Court in the case of Vicksburg, Shreveport & Pacific Railroad Company vs. Dennis, delivered in 1886, had been published, and on a clear misconception, as we understand it, of said case, this denying our exemption was based. The whole claim is an afterthought. The parties to the contract understood its terms alike, acted on the construction for six years. (Record, page 5.) So far then as open actual construction of the contract by both parties for six years is concerned, the new theory has no countenance. If there had been any doubt as to what the State had agreed to in said charter, surely some of her officers would have discovered the doubt, and had the railroad assessed for taxation in 1882–3–4–5–6 or 7. This neglect to tax cannot be explained by supposing the property was hid or unknown, nor by supposing any sort of partiality for a railroad, which would blind the keen-eyed publicans of Mississippi. On the contrary, if there is any kind of property incapable of being hid, or of getting away, or of exciting the pity of a tax assessor, it is a railroad.

But it may be asked, "What is the value of practical construc-"tion by the parties of their contract?"

Optimus interpres rerum usus, contemporanea expositio est fortissima in lege.

"Tell me what has been done under a contract and I will tell you what it means."

It is the short and simple rule of fair dealing and common honesty which has defeated many shrewd afterthoughts, new phases of the meaning of words and sentences used, born in a light different from that in which the parties to the contract saw, understood, agreed, acted.

If it took one party to the contract six years to discover that the words used would bear a different meaning from that which the parties understood and acted on, he ought not to be allowed to

assert the new view simply because it was not what was agreed on —not the contract they made. And this thought is strengthened by the fact that the party now asserting the new view is the party who drew the contract, and not only so, but the party who expressly undertook therein to make it "*certain*" as to this matter.

7. In order to the better comparison of the section of the charter construed in the case of Vicksburg, Shreveport & Pacific Railroad Company vs. Dennis, (the case on which they rely), and the section of the charter in the case at bar, we put them in parallel columns.

SEC. 2 of V., S. & P. R. R. Co. charter.

"The capital stock of said company shall be exempt from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State."—*116 U. S. Reports, page 665.*

SEC. 8 of charter of Yazoo and Mississippi Valley Railroad Company.

"*Be it further enacted*, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills,—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond twenty-five years from the date of the approval of this Act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the State treasury, to be dealt with as the legislature may direct; but said company shall be exempt from taxation by cities and towns."

A mere glance at these parallel columns, without referring to the other differences between the charters, will show that the cases are radically different.

The particular clause of the charter in the case at bar upon which our opponents rely, even if we exclude what precedes and also what follows it, gives no support to their theory. That clause cut out from the context reads as follows, and we put in parallel column that clause filled out as in grammatical construction and plain meaning it must be read,

"Shall be exempt from taxation for a term of 20 years from the completion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this Act."	"Shall be exempt from taxation" (from the date of the approval of this Act) "for a term of 20 years from the completion of said railroad to the Mississipi river, but not to extend beyond 25 years from the date of the approval of this Act."

It will be seen by comparing these two that the only difference between them in words is the placing the words "from the date of "the approval of this act" in both parts of the sentence. The evident sense and meaning is the same in both. The plain meaning of both is exemption from the date of the approval of the Act for a term of twenty years after completion to the river, but the exemption in no case must extend beyond twenty-five years from the approval of the Act; nor, if it is found practicable and a line is extended to the river in less than five years, shall the exemption be extended beyond twenty years from the completion of such extension, though the whole term of exemption does not reach twenty-five years.

As will be seen hereafter, this plain construction of the language used fits the condition of the parties at the time the contract was made, and gives to an enterprise so unusually difficult a possible five years more of exemption than the ordinary and usual twenty

years exemption granted at that session to railroad companies, which proposed to build lines whose location and termini could be and were fixed in advance—lines over a territory that presented no extraordinary difficulty nor risk, nor doubt as to where it was practicable to locate them, no engineering difficulties, no periodical floods of a great river, no unreclaimed swamps. Lines, the location, cost and practicability of which could be determined in advance and without costly experiment.

8. Again, consider the words, "but not to extend beyond "twenty-five years from the date of the approval of this Act." If exemption began at the time of the approval of said Act, these words are full of meaning. If it did not, then they are not only surplusage, but confuse the meaning of the whole section.

In the one case, they prudently limit a possibility of perpetual exemption in case a line to the river should be found impracticable, for in Section 2 the words "if practicable" are used and the duty is made to depend on whether it is practicable. Put it out of the power of the company in any event, whether such line is found practicable or not, to claim the exemption more than five years beyond the common exemption of twenty years given to ordinary roads.

In the other case there would be a fixed term of exemption of twenty years, which could in no case be lengthened, and there is no intimation in any of the Acts of that legislature that any new railroad should have less than twenty years exemption.

Look at the clause a little closer. What is it that would begin at the approval of the Act and extend forwards? What is it whose extension "*from*" the approval of the Act more than twenty-five years was prohibited by this clause? Manifestly, the exemption.

9. The counsel for defendant says as to this clause, "The idea "was to induce early completion to the river, so as to *then* enjoy "exemption."

But would it not be an anomaly to find a railroad company who, instead of accepting 20 years present exemption, (to cover the period of construction when all was outgo and none was income),—considered it an inducement to have everything taxed while unremunerative, in order to have the same term of 20 years exemption at a future time when they did not so much need it? And can it be for a moment doubted that the legislature would have given this dangerous and doubtful enterprise the same 20 years exemption from the date of the Act that it gave so many other railroad companies at that session?

Take, for instance, the charter of the Canton, Aberdeen and Nashville Railroad, to which defendants refer, which was approved *same day* as the charter in the case at bar. (Acts of Mississippi, 1882, pages 1001–1008.) That was a road in the uplands running "via Starkville and West Point, via Aberdeen," etc, There is no preamble to that charter—no statement, as in this, that it is a "work of great public importance, and in strict accordance with "the true policy and interest of this State should be encouraged by "legislative sanction and *liberality*." No statement in that charter, as in this, that "the physical difficulties in constructing and main-"taining" such a road "are such that no private company has so far "been able" to accomplish it; nevertheless a 20-year exemption was granted it "from the date of the approval of this Act." (Ibid, page 1008.) It will also be seen that thirteen of the incorporators in both these charters are the same persons. And yet the result of defendant's argument and construction is that the road more difficult and costly to build is to have a possible future exemption of 20 years, while the less difficult and costly road is to have a present exemption of 20 years. The road which the State declares should as a matter of "interest" and "true policy" be encouraged by her "*liberality*," is given a possible exemption of 20 years in the far future, and a road which is of no practical difficulty or special

importance is given a full 20 years at once. And yet they speak of this matter as an inducement! The old saying, that "a bird in "the hand is worth two in the bush," is peculiarly illustrated in this case.

10. The utter unreasonableness of defendant's theory and argument is further shown by the fact, that according to their construction, the supposed future exemption cannot exceed 20 years, but may be lessened to a much shorter term. So that it would not only be the taking a future for a present grant—a future exemption, when they probably will little need it, for a present one which they certainly need—but they run the risk of not getting as long an exemption in the future as the legislature was granting every railroad company that asked it in the present. For defendant insists that every year over five years that it may take the plaintiff to ascertain the most practicable route to the river and to construct and complete it, takes one year off the 20-year exemption.

Nay, more. If a line or branch to the river is found by plaintiff to be impracticable from any cause, there will be no exemption at all—none in the present, none in the future.

A glance at the map of the State of Mississippi will show that the nearest point on the Chicago, St. Louis and New Orleans Railroad to the Mississippi river, "at or near a point opposite Arkansas "City," is about 100 miles on an air line. Now, if defendant's view of this charter contract is correct, it follows that the thirteen corporators who, under a charter of the Canton, Aberdeen and Nashville Railroad Company, approved same day as the charter in this case, get a present exemption for 20 years on that road in the uplands—these same men, according to defendant's construction, undertook the far more difficult, doubtful and dangerous work of developing a swamp country by railroads; and as to exemptions accept:

1. A future exemption, instead of one in the present.
2. An exemption when there would be an income from the

property, instead of one when the property was earning nothing.

3. A future exemption, which might be less than twenty years, instead of the usual and certain twenty years in the present, granted by the other contracting party to every railroad company asking it.

4. A future exemption which might, by no fault on their part, be defeated altogether, instead of twenty years now.

5. And making such an agreement when it was certain that it would take much time and money to ascertain whether the fulfilling of the condition on which exemption depended was practicable, and years of work and millions of money to complete it, if found practicable.

It might be said, however, that the State, for some cause or other, did not deem the plaintiff's proposed railroad of so much importance as any of the many others which, at that session of the legislature, she granted twenty years of exemption to. The truth is, on the contrary, that the State in this charter declares that plaintiff's proposed railroad "is a work of great public importance," and that it was as a matter of "policy and interest of this State" to be "encouraged."

Or, it might be said that the State, when considering the various railroad charters before that session of the legislature, for reasons which no one has the right to know, intended to be more illiberal with plaintiff's road than with the others. But the fact is, that the State, in plaintiff's charter, expressly declares that the same should, "in strict accordance with the true policy and interest of this State, be "encouraged by *legislative* sanction and *liberality*." The preamble to plaintiff's charter contains no idle, nor meaningless, nor untruthful words. The statement therein, that the "physical difficulties of "constructing and maintaining railroads," in that swamp country, "are such that no private company has so far been able to establish a "railroad therein," is verified by the fact that at almost every session of the legislature since the invention of railroads the most liberal

charters have been granted to many score of railroad companies, giving them authority to build railroads in said delta, and the fact that at the time the charter in this case was granted, not one of them had built a single mile of railroad therein. Except a little narrow-gauge railroad, some fifteen miles long, running from Clarksdale on the river to some plantations near by, and which did not run in high water, the whole of the Yazoo delta, from Vicksburg to Memphis, was without a single mile of railroad in 1882. Now it has many miles of railroad in operation, and the pioneer who first risked its money in that territory, on the faith of the charter contract in this case, and who has spent millions of money in a comparatively unsettled country, and thus at a continual loss to itself for seven years, developed "the resources and wealth" of said State, is confronted, not with the "liberality" mentioned in the contract, but with the denial of its obligation, and the imposition of grievous burdens, which are sought to be defended by a technical construction of the language used, which is utterly at variance with what the parties to the contract understood and assented to, as well as with the first principles of fair dealing.

11. Again: What possible meaning can be given the clause immediately succeeding the exemption clause, if defendant's construction is adopted? If our construction of the exemption clause is adopted, to wit: that exemption began at the approval of the Act, the clause following it is natural and intelligible, viz.: "and *when* "the period of exemption herein prescribed shall have *expired*, the "property of said railroad may be taxed at the same rate as other "property in this State."

On our theory the State undertook to "make certain" what taxes and burdens would be imposed, and by this clause she fixes the time *when* taxes might be levied. But if, on their theory, the taxes, without any "making certain," begun at once, and would be merely suspended during the continuance of the exemption, of what

use is this clause? Manifestly, when the exemption ended, taxes would accrue. Why, then, say "and when the period of exemp- "tion herein prescribed shall have expired, the property of said rail- "road may be taxed?" Of course it was the subject of taxation when the exemption had expired. Why say it "*may*" be *then* taxed, if, indeed, it was subject to tax *before*?

If they say that these words were surplusage—mere declaration of what would be the result anyhow—it is a confession that these words are not considered with the others in determining the meaning of the whole, or if they are, they have no effect; while we give them a meaning, to wit: the fixing the time *when* taxation should begin, and that meaning is in harmony with the other parts of the Act, and especially answers to that part of this section in which the State undertook "to make certain in advance" what taxes would be imposed.

Once more: If the State thought it necessary to use this express language about taxes *after* the exemption had expired, why did she not also use similar language as to the taxes *before* exemption begun, if such were to be imposed?

She did expressly mention the one, why did she not also mention the other? especially as she undertook to make them "certain" in advance. *Expressio unius exclusio alterius.* This clause is therefore not merely surplusage, if defendant's construction is correct, but it is incongruous with the whole section thus interpreted.

12. A consideration of the last sentence in Section 8, strengthens the construction plaintiff puts upon said section, and is not conformable to the afterthought construction of defendant. Said sentence is as follows: "All of said taxes to which the property of said company "may be subject in this State, whether for county or State, shall be "collected by the Treasurer of this State and paid into the State "treasury, to be dealt with as the legislature may direct; but said "company shall be exempt from taxation by cities and towns."

This is an important and material part of this charter contract. Its value in money to the plaintiff is very great. It makes a mode of taxation entirely different from those which are governed by the ordinary revenue laws. It makes one collector of all taxes instead of many. One collector for both State and all the county taxes, instead of one for each in each county. It enables plaintiff, as to payment of taxes, to deal alone and directly with the Treasurer of the State, and thus avoid the expense of local agents to look after tax matters, and hunt up the many tax collectors, and keep up with their notices and times and places. It is wholesale instead of retail, so far as the railroad company is concerned, and may be paid each year by one check mailed by railroad company to treasurer, and thus avoid the danger of loss and time of agents in carrying the money to these many tax collectors and of keeping accounts with each.

There can be no misunderstanding of this part of the contract, to wit:

First. "*All* of said taxes to which the property of said company "*may be subject* in this State *shall*" be collected by the State Treasurer.

Second. And *all* such taxes shall be paid into the State treasury.

Third. *All* such taxes so collected and paid in shall "be dealt "with as the legislature may direct."

And yet we are seized upon by these county tax collectors as if our charter was of no effect. The ordinary county tax collector of each county demands the payment to him of the tax claimed for his county under the general revenue laws of the State, and in defiance of our charter mode. The Treasurer of the State, who alone is agreed upon as the collector, and the State Treasury, which alone is agreed upon as the depository of the collection in one lump, is entirely ignored.

It may be that the legislature, which alone has the power of

disposition of all taxes collected from plaintiff, may, in the spirit of liberality, mentioned in the charter, return them to the company, or direct their expenditure towards the development of this swamp country, which the State has so much at heart. But these fellows in every county, who, but for the injunction in this case, would have forced us to pay to them, are under the revenue laws bound to pay their collections, not to the State treasury, but to the several county disbursers, for county purposes; while by our contract we are bound to pay all taxes legally assessable against us to the Treasurer of the State alone. In short, under this charter contract, if any taxes are due, they are not due to the counties, nor payable to or collectable by county tax collectors. So that, even if defendant is right in maintaining that we now owe any State or county taxes, we do not owe them to these defendants, and the injunction against them should be made perpetual. A payment to them for distribution to their several counties is no discharge of our charter obligation to pay all county and State taxes to the State Treasurer, and there is no statute changing our obligation, as fixed by our charter to pay to the State Treasurer, nor devolving the duty of collecting the same on these defendants in the stead of, or in behalf of the State Treasurer, nor requiring them to pay the same into the State treasury.

How do defendants propose to maintain these seizures for taxes by county collectors in the face of the scheme of taxation peculiar to this road, as fixed in its charter?

We call attention to the way Messrs. Calhoun and Green dispose of it in their printed brief in this case, page 9, and as this is the only brief for defendants we have seen, we suppose it correctly states the position of defendants. They say on page 9 of said brief, "To the argument that the charter provided a scheme of taxation "peculiar to that road it is sufficient to say that if this be true, the "scheme is to commence to be in force by express terms *after* the

"termination of the exemption and not before it began, and the "right to tax before cannot be regarded as waived by silence as to "the mode of assessment and levy. It would fall into the general "plan before the exemption began." This position of defendants is like all the others they take, in utter disregard of the language of the section, and shows into what desperate straits this afterthought theory has driven them.

This very clause says, "*All* of said taxes to which the property "of said company *may be* subject in this state, whether for county "or state shall," etc. They claim that the property of the company is *subject* to the taxes enjoined in this case. If it is, are not these taxes covered by the word "*all?*"

This clause does not say anything about whether the taxes are before or after. It says "*all* * * to which the property of "the company *may be subject.*" So that if it is subject to the taxes claimed, they are covered by the scheme, and the defendants have no right under the Act of April 3, 1888, nor any other Act to collect them, unless such Acts overturn this provision of our charter. And if the property is not subject to these taxes the same result follows.

They say "the scheme is to commence to be in force by express "terms *after* the termination of the exemption," and yet the scheme comprehends *all* taxes to which the property may be subject.

We do not desire to press this admission of defendant's counsel, though it is made in a formal printed brief, but simply call attention to it, in order to show that this last clause is also inconsistent with their construction of Section 8, while it entirely accords with ours.

13. But they say, the great object which the State had was to have the railroad reach the Mississippi river. Let us briefly refer to the conditions surrounding the parties at the time this contract was made, and take a birds-eye view of the territory in which these works were to be placed.

At Memphis, Tennessee, the Chicasaw Bluffs extend out to the Mississippi river. At Vicksburg, Miss., the hills come to the east bank of said river also; but between these two points, the river bending to the westward and the hills to the eastward, there is the territory to be developed. It is about two hundred miles long, and about an average of fifty miles wide. The Deer creek, the Sunflower river and the Yazoo river lie in the order named east of the Mississippi river, and for the most part run parallel with it until they all are gathered into the Yazoo river, and it turns nearly west, emptying into the Mississippi river just above Vicksburg. The banks of these several streams are generally higher than any other part of this swamp country, and there is a depression between the Mississippi river bank and Deer creek, and between it and the Sunflower river, and between the Sunflower and other streams east of it. The general depression below the east bank of the Mississippi river is from twelve to twenty-two feet, the greatest depression being generally near the foot-hills. The general direction of the rivers named is from north to south, and besides those named there are the Yallabusha, the Tallahatchie, the Coldwater rivers, and numerous bayous, creeks, lagoons, lakes, and sloughs in parts of said delta. The lands are very fertile. the timber is extremely heavy, consisting chiefly of yellow gum, which will not float. The Mississippi and the Yazoo rivers are navigable all the year and some of the other streams and lakes at certain seasons of the year. The chief product of this territory is cotton, which is prepared for market in the late fall and winter, when dirt roads are generally bad. So much for this delta territory. The population of what is known now as the State of Mississippi in 1800 was 7,600, which was scattered along her navigable rivers—4,660 in Adams county, 294 in Jefferson county, 1,250 in Washington county—all along the Mississippi river. In 1810 the whole population was 31,306, and in 1820 the population was 75,448, located almost exclusively on lands contiguous to navigable rivers.

From the foothills east is an elevated country, gradually rising until it reaches the dividing ridge from which the waters flow on the one side directly to the Gulf of Mexico, and on the other to the Mississippi river. This dividing ridge lies in a north and south direction, with double as much territory on the west as on the east of it, and on the west there are many unnavigable streams with wide bottoms, difficult to cross at all seasons and almost impassable in the fall or winter. In 1882, the time when this charter contract was made, there was the Chicago, St. Louis and New Orleans Railroad on the west side of said dividing ridge, and the Mobile and Ohio Railroad on the east side thereof, running through the State from north to south, and the Vicksburg and Meridian Railroad and the Natchez, Jackson and Columbus, reaching the Mississippi river at Natchez and Vicksburg respectively, and the Mississippi and Tennessee Railroad, running from Grenada, Miss., to the Mississippi river at Memphis, Tenn. The railroad from Mobile to New Orleans across her southern boundary completes the list of her railroads then.

That part of the 4,000,000 acres of the alluvial lands between Vicksburg and the northern boundary of Mississippi lying near the Mississippi river or other navigable stream, had already *cheap transportation*—indeed, had long been settled and prosperous, as the statistics of said State show. This fact, and the further fact that water transportation has for obvious reasons always been cheaper than that by railroad, and the fact that cotton, the chief production of this delta, is not perishable, and that it varies in price less than any other staple product of the soil, make it clear that there was no reason why the State should be so anxious, as defendants assume she was, of getting a railroad to the Mississippi river in this swamp. And the further fact above mentioned, that the railroads already then in existence in her borders reach the Mississippi river—at New Orleans, at Natchez, Miss., at Vicks-

burg, Miss., and at Memphis, Tenn., the latter point only a few miles north, the first point a few miles south of and the other two within her borders—also shows that extending a railroad to the river in this swamp, was not an object of great importance to the State.

This exaggeration of a supposed great anxiety of said State to have such an extension, has, therefore, no foundation in the situation of the territory nor the welfare or prosperity of the State, the territory or the people in it.

There was, however, much the larger part of this fertile delta which was not accessible to natural water transportation, and consequently valueless; but which, if it could be reached by railroads, would, on account of its valuable timber and fertile soil, rapidly become productive and prosperous, "and thus develop the resources "and wealth of this State." These *un*developed lands lay, not on the Mississippi river, nor easily accessible to it, but "between the "Mississippi river and Deer creek, and between Deer creek and the "Sunflower river, and between the Sunflower and Yazoo rivers." (See Section 2.) It was these "basins and alluvial lands" which in the preamble are mentioned. It was the lands lying in "the Mis-"sissippi river basin, and the Yazoo and Sunflower river basins" that are mentioned in the first clause of the preamble. It was the "penetrating" these and other undeveloped alluvial lands that the State declared "should be encouraged by legislative sanction and "liberality," as mentioned in the first section of the preamble. It was these "Mississippi, Sunflower, Deer creek and Yazoo bottoms "or basins," and "other alluvial lands," which no one had so far been able to develop, as mentioned in the second section of the preamble. It was the development of these undeveloped lands which were to increase "the resources and wealth" of said State, as mentioned in the third section of the preamble, and not the lands along the Mississippi river bank, which already had cheaper trans-

portation than any artificial means of transportation could give.

14. But let us look a little closer at this charter and see, if in the means authorized to be used, or in their connections, we may not find the facts upon which defendants found their theory of construction, to wit: That the chief and controlling idea in the mind of the State, when she made this charter contract, was the early completion of a line to the Mississippi river.

First, then, what were the means to be used for developing this territory—were they canals or railroads? The answer is that it was to be a system of railroads.

Second. What about their connections? For, though it is apparent that the people along the bank of the Mississippi river had cheaper transportation already than a railroad could give them, and consequently, as a matter of reason as well as actual fact, such lands were already developed—indeed, were the first settled in the State—still, there may have been some occult reason in the mind of the State for thinking, as defendants claim, that the early completion of a railroad somewhere to the Mississippi river was a matter of the first importance, in order to develop the wealth and resources of the State.

It is also true that there were already two railroads running to the river within the boundaries of the State, directly from her capitol, and two others that ran through the State and reached the river, one just above and the other a few miles below her boundaries. Still, there must be some basis for the foundation upon which defendants build their whole theory, and as we have been unable to find it elsewhere, let us see if, in the connections of this system of railroads, or the objects of the authorized connections, as stated in the charter, we may not discover the secret of defendants' inspiration.

The preamble, in declaring the "great public importance" of the building of railroads in the aforementioned basins, adds as the

object "and connecting them"—that is, these basins—"by railroads" —with what? with the Mississippi river? No. It reads, "and "connecting them by railroads and branches with *other railroads;*" and so, in the second section of the preamble, the words are "to "establish a railroad and branches developing said basins and alluvial lands, and connecting them," with what? the river? No; but "*with the railroad system of the country,*" and then it proceeds: "Now, therefore, in order to induce the investment of capital in the "construction, maintenance and operation of *such a railroad and* "*branches,*" etc., "Be it enacted," etc. Well, that seems plain. There is no intimation in the preamble of the immense importance of the completion of a railroad to the Mississippi river. On the contrary, the only connections mentioned are with the railroad system of the country—and yet this preamble purports to be a statement of the object sought, the means of attaining it, the difficulty of accomplishing it, and the importance of its accomplishment. It is, therefore, unaccountable why a State so full of the idea on which defendants base their whole construction, did not, in such a statement, mention it.

15. Again: The State in this charter deemed it so important to have in operation twenty miles of said railroads in three years, that she made a forfeiture of the whole charter depend on it. Well, surely, if her paramount desire was as defendants claim, she would certainly require this twenty miles to touch the river, or at least to be a part of a line reaching the river. How readest thou? Section 13, requiring the construction of twenty miles in three years on pain of forfeiture, makes no mention of the Mississippi river, nor any line towards it. How strange!! Now, here are two places where, if the State had such an idea as that upon which defendants base their theory, it certainly would have appeared; but we find not the slightest trace of it.

16. Let us try this idea of defendants again by the language

used in the charter. Was there any line of railroad to any particular place, required by the charter to be built? If so, we will surely find that such line starts from or reaches to the Mississippi river.

Well, we find in Section 2 of the charter, that there is a line which *must* be built—the building or not of which is not left, as all others are, to the discretion of the company, nor does it depend upon whether it is "practicable" or not. The time of its building is not fixed, but if they build any, this line to a particular place must be built. Is it to or from the Mississippi river? No. It says, "One of said lines of railroad or a branch therefrom, to be "extended to or pass through Yazoo City, Mississippi," and Yazoo City is not on the Mississippi river, but is on the foothills, on the furthest side of the swamp from the Mississippi river.

17. Again: If the State was impressed with the idea which defendants make so prominent, would she not, in authorizing a railroad and branches to develop such a territory, have at least required that the main line thereof should reach the river—the great objective point? Surely she would. But an examination of the Act fails to show that the State undertook to declare even which should be the main line, or where it should run; but, on the contrary, left the whole matter to the judgment and discretion of the company. The words used are, "One of said lines *or a branch* "therefrom * * * if practicable."

18. Ah! but they say, that in the second section of the Act these words occur: "One of said lines or a branch therefrom to reach "the Mississippi river at or near a point opposite Arkansas City, if "practicable, so as to connect such point on the east bank of the "Mississippi river with some point or points on the line of the "Chicago, St. Louis and New Orleans railroad;" and again, in the eighth section a reference is made to the completion to the Mississippi river. This is true. But in both cases the context shows, not only no certainty that such a line or branch would be built, but that

the parties understood that its practicability was doubtful, and so it was not made obligatory to build it. In Section 2 this is precisely expressed by the words "if practicable," and in Section 8 the clause "but not to extend beyond twenty-five years from the date "of the approval of this Act" contemplates such a line or branch as never being practicable or never being built, by fixing the extreme limit of the exemption at twenty-five years from the date of the Act.

It is impossible to believe that a State dominated, as they suppose, by the one idea of a line to said river, would have left such a leading and absorbing idea, with no other basis in this long charter than the two limited, halting clauses above mentioned. And the fact that it took six years to evolve this ingenious idea, and the Cæsarian operation of cutting it out from its hiding-place by the rude rending of the contexts which enclosed the supposed evidence of its existence, justifies the supposition that, if it is born at all, it is still-born.

Indeed, the birth of a new idea, after six years from the time of the intercourse of the parties to this contract, is too long a period of gestation or incubation to charge them as its parents.

This new thing is a bastard. It has no resemblance to any of the many salient features of this charter.

RECAPITULATION.

We have thus shown:

I. That the plain reading of the charter leaves no room for doubt as to the time "*when*" taxes may be levied. (See paragraphs 2, 3, 4 and 5 of this Argument.)

II. That both parties so practically construed it, and so acted under it for six years. (See paragraph 6.)

III. That the case on which they rely is utterly unlike this case, and that even the exemption clause in this case cut out from the context, does not support their theory. (See paragraph 7.)

IV. That their construction of the exemption clause is inconsistent with the clause itself, inconsistent with the clause immediately preceding it, inconsistent with the clauses succeeding it, inconsistent with the scheme of taxation therein declared, with the situation of the parties, and with the whole trend of the Act.

V. That the defendant's construction of the exemption clause is inconsistent with the clause immediately preceding it in Section 8, in this, that it leaves in uncertainty what the State expressly undertook to make "certain." Among other things is this, that the tax they claim is not only not mentioned in the Act, but there is not the slightest reference in the charter to it. Indeed, they claim it outside the charter, and yet the State undertook in the charter "to make *certain* * * the taxes and burdens which "this State will and will not impose thereon." They claim it under *subsequent* general laws, but the State undertook to make all taxes and burdens which she would impose thereon "certain *in* "*advance* of such investment and as an *inducement* and consider- "ation therefor."

VI. In this: That their construction is inconsistent with the latter part of the exemption clause itself, to wit: "But not to

"extend beyond twenty-five years from the date of the approval "of this act." (See paragraphs 8, 9 and 10 of this Argument.)

VII. In this: That it is inconsistent with the clause immediately following the exemption clause and in the same sentence, to wit: "And when the period of exemption herein prescribed "shall have expired, the property of said railroad may be taxed "at the same rate as other property in this state." (See paragraphs 2, 3, 4 and 5 of this Argument.)

VIII. In this: That their construction is utterly inconsistent with the scheme of taxation declared by said Section 8 of the charter.

(*a*) The scheme of taxation made "certain" by said section of plaintiff's charter fixes the time *when* the property "may be taxed" as the time "*when* the exemption * * shall have ex- "pired," instead of before it has expired, as claimed by defendants.

(*b*) The scheme also makes "certain" that one State officer, instead of the numerous defendants, shall collect the taxes that may be imposed.

(*c*) It names the officer who alone is authorized to collect the taxes, viz.: The Treasurer of the State, and none of the officers whom defendants claim are authorized to collect such taxes, are, or even represent, the Treasurer of the State. They are all county officials.

(*d*) It fixes and makes certain the place where the taxes so collected shall be deposited, to wit, in the "State Treasury," instead of several county treasuries.

(*e*) It makes "certain" who shall deposit the taxes so collected in the State Treasury, and it is not any of defendants.

(*f*) It makes "certain" who shall have the *disposition* of all taxes "to which the property of said company may be subject,"

to wit, the "legislature" of the State, instead of counties and county officers.

(*g*) And, lastly, said tax scheme agreed on in said charter not only makes it plain that said taxes, so made "certain" as to the *time* when the property may be taxed, the *officer* by whom to be *collected*, the officer by whom it is to be *deposited*, when so collected, the *place* in which it is to be deposited, the party who alone may *deal* with said taxes when so collected and deposited, but also that such taxes, so collected, deposited and dealt with, comprehend not only State taxes but also county taxes as well—indeed "*all*" * * to which the property of said company *may be* subject—taxation by cities and towns being absolutely disallowed. (See paragraphs 11 and 12.)

IX. We also show that the supposed fact upon which defendant's theory is based has no existence, whether we consider the territory to be developed or the condition of the parties. (Paragraph 13.)

X. And that, looking to the whole charter and considering its different sections, this supposed fact, without which all defendant's superstructure falls of its own weight, is not to be found there; and hence that as it did not and does not exist, either in the language of the charter fairly construed nor outside of it, it has no existence at all as a fact. (See paragraphs 14, 15, 16, 17 and 18 of this Argument.)

XI. And then there is the result of defendant's theory, to wit: That, though it is perfectly manifest in reading the Act, that the great object was to develop an *un*developed swamp country by a system of railroads and branches, and that the proposed exemption was held out as an inducement to the vast work, yet that this whole swamp might be crossed by plaintiffs with railroads so that every part of it was accessible to markets and the railroad system of the country; still, if a line or branch of such a vast and costly network

of roads did not reach the Mississippi river, even though the system of railroads with which it connected reached said river in a hundred places, still, if it was "impracticable" to reach it with a branch in this swamp there was to be no exemption whatever. In short, under their theory it is possible that a network of many hundred miles should cover this *un*developed country, and yet never have any exemption at all, under this charter. And it is a fact that 140 miles of such railroads have been built developing said undeveloped lands—and yet they claim there is no exemption. This result will shock the mind of one reading the whole charter, and should not be allowed.

I will not extend this argument by discussing the difference between a State exempting a particular property then *in existence*, while all of the same class then in existence are taxed, and a case where a State, in order to induce and secure the creation of a quasi public enterprise not then *in esse* grants a limited exemption until it is well established. Nor by referring to the fact that all railroads in said State were granted exemptions as inducement to their construction.

Nor will I discuss the question of jurisdiction lately raised in one of these cases, and the special tax theory in the other, especially as my associate counsel devote attention to these questions; but I deem it due to myself, as well as to the court, to say that I greatly preferred an oral argument in this case, and consented to its submission on printed briefs and argument simply from the fact that before we could reach the cases on an oral argument there would be innumerable yearly recurring levies and law suits. I am, however, as certain that these cases have been wrongly decided and should be reversed as a lawyer can be about the proper decision of any case. The submission of them is therefore in no sense because I think there is little or nothing in them.

JAMES FENTRESS,

General Solicitor and of Counsel for Plaintiff.

CHAPTER DXLI.

AN ACT incorporating the Yazoo and Mississippi Valley Railroad Company, and declaring its powers.

WHEREAS, The construction of railroads to, in, through and along the Mississippi river basin, and the Yazoo and Sunflower river basins, penetrating these and other alluvial lands in this State, west of the Chicago, St. Louis and New Orleans Railroad, and connecting them by railroads and branches with other railroads west, east, north and south, is deemed and hereby declared to be a work of great public importance and in strict accordance with the true policy and interest of this State, should be encouraged by legislative sanction and liberality; and,

WHEREAS, The physical difficulties of constructing and maintaining railroads to, across, along or within either the Mississippi, Sunflower, Deer Creek or Yazoo bottoms or basins, or the other alluvial lands herein referred to, are such that no private company has so far been able to establish a railroad and branches developing said basins and alluvial lands, and connecting them with the railroad system of the country:

Now, therefore, in order to induce the investment of capital in the construction, maintenance and operation of such a railroad and branches, and thus develop the resources and wealth of this State:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That R. C. Shepherd, F. Barksdale, J. Z. George, Wm. R. Pillow, F. A. Montgomery, G. W. Faison, John Willis, R. P. Neely, W. H. H. Green, John W. Shields, W. H. Osborn, J. C. Clarke, W. K. Ackerman, L. V. F. Randolph, A. R. Van Nest, F. Sturges, Jno. Elliott, W. W. Gebhard, James Fentress, W. H. Bayard, R. N. Miller, W. P. Harris, R. H. Thompson, James Trotter, L. E. Simonds, H. Q. Bridges and H. S. Foote, together with those

who may hereafter become stockholders, their successors and assigns, and the assigns of such assigns forever, be and they are hereby created a body corporate, under the name and style of the Yazoo and Mississippi Valley Railroad Company, and as such shall have perpetual succession; and said corporation, its successors and assigns, are hereby forever authorized and made capable in law to have, hold, purchase, receive and enjoy real and personal estate in this and other State or States, whether acquired by way of security or in satisfaction of debt, or by donation, purchase, devise or otherwise, and to hold, use and enjoy all of such real estate in fee simple or otherwise, and the same or any part thereof to sell, rent, lease, mortgage or otherwise dispose of or encumber; to sue and be sued, plead and be impleaded; to use a common seal, and the same to alter, break or renew at pleasure.

SEC. 2. *Be it further enacted*, That the said corporation shall also have, and it is hereby authorized and invested with the right and power to build and construct, and thereafter to use, operate, own and enjoy a railroad or railroads, with one or more tracks, into, along and across that part of the State of Mississippi lying between the Mississippi river and the Chicago, St. Louis and New Orleans Railroad, on such line or lines as shall be deemed best by the board of directors of the company hereby chartered; one of said lines or a branch therefrom to reach the Mississippi river at or near a point opposite Arkansas City if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans Railroad; one of said lines of railroad, or a branch therefrom, to be extended to or pass through Yazoo City, Mississippi; and said company shall have the right and power, and are hereby authorized to build one or more branches or lines of railroads between the Mississippi river and Deer creek, and between Deer creek and the Sunflower river, and between the Sunflower and Yazoo rivers, in the direction of or

to the north line of this State, and extend the same, or any one thereof, in the direction of or to the south boundary line of this State, as shall from time to time, in the judgment of said company, be deemed proper; and shall also be authorized to construct and operate such spurs or laterals from or along such main line or branches not exceeding one hundred miles in length, as may from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans Railroad, and east of the Mississippi river, in this State; and the said company, as soon as and whenever, from time to time, they have located said line or lines of railroad or branches, spurs or laterals thereto, or any of them, shall file in the office of the Secretary of State a statement showing the general line thereof as far as the same has up to that time been located.

SEC. 3. *Be it further enacted*, That the capital stock of said company shall be five millions of dollars, but the same may be, from time to time, increased to a sum or sums not exceeding the amounts actually expended by said company in constructions, completions, equipments and additions to said railroads and property; and said company may issue any part of said stock as preferred stock, and fix the relative rights of common and preferred stock as to dividends and income, and they may issue said stock or any part thereof as fully paid and not liable to calls; and also such bonds and obligations as they may from time to time determine; said capital stock shall be in shares of one hundred dollars each, and each share thereof shall entitle the holder to one vote, under such regulations as the company may in its by-laws provide; said stock shall be deemed personal property, transferable by assignment agreeably to the by-laws of said company, and may be owned and voted by any person, association or corporation of this or any other State or country, in person or by proxy, with the same power as such stockholder (though an alien or foreigner), to bring and maintain suits, or do

other acts, in his right as such stockholder, as if a resident and citizen of this State.

SEC. 4. *Be it further enacted*, That the affairs of said company shall be managed by a board of directors and such officers and agents under them as the interests of the company may, from time to time require; such board of directors shall consist of such a number of members as the company may determine, from time to time, but not less than five; one of whom shall be a resident of the State of Mississippi; and said board shall have power to appoint an executive committee with full power to act in their stead and place, at all times when said board of directors is not in session; the persons named in the first section of this act, may of their number organize a board of directors who may open books of subscription to the capital stock of said company, and when five hundred thousand dollars of stock has been subscribed, shall call a meeting of the stockholders or subscribers thereto, for the election of a board of directors; the term of office of director of said company shall be three years, and until his successor is elected and qualified, but in the first election of directors by the stockholders or subscribers to the capital stock as above provided, part of said directors shall be elected for one year, part for two years and part for three years, as may be determined at said meeting; and in each subsequent year a number of directors shall be elected by the stockholders equal to the number of directors whose term of office expires in such year; and said board of directors may, of their number, elect a president and fix his term of office and compensation; and may provide for the election of or appointment and removal of such other officers and agents as, and when they please, and may create and abolish such offices, fix the duration and compensation thereof, from time to time, as may seem best, and may adopt, modify or alter by-laws for said company at their will, not inconsistent with the laws of this State, and do all other acts proper or necessary to be done in the management of the affairs of said company.

SEC. 5. *Be it further enacted*, That said company may, from time to time, mortgage or convey in trust any or all of its property, real, personal and mixed, of any and every description whatsoever, then owned or thereafter to be acquired, and also all or any of its rights, powers, privileges, liabilities, immunities and franchises whether then owned, possessed and enjoyed or thereafter to be acquired, including its rights to be a corporation; and under such deed or deeds of trust or mortgage secure, execute and dispose of the mortgage bonds of said company, to such amounts and maturing at such times and bearing such interest as it may deem best; said company may also execute a mortgage or mortgages and trusts as aforesaid, to secure bonds or obligations of other railroad companies, or may endorse the bonds of any other railroad company or companies; or in any other manner guarantee such bonds and secure the same by a mortgage or mortgages on its own property and franchises, then owned or thereafter to be acquired, as fully as it could do if the bonds were issued by it as aforesaid; said company may consolidate with any other railroad company in or out of the State of Mississippi upon such terms as the consolidating companies may agree upon; and it may lease its railroads and all its property and franchises, rights, powers, privileges and immunities then owned or thereafter to be acquired, or lease other railroads in or out of this State, for a term of years or in perpetuity, and upon any such consolidation, the consolidated company shall have and enjoy all the property, rights, privileges, powers, liberties and immunities and franchises herein granted; but such consolidation shall not have the effect of exempting from taxation the railroad or property owned by such other consolidating company prior to its consolidation with the company hereby chartered; nor of exempting from taxation any property which the consolidated company may, after such consolidation, acquire under the provisions of the charter of such other consolidating company; and in case

of a lease, the lease shall, so far as the terms of the lease may allow, enjoy and possess all the property, rights, powers, privileges, liberties, immunities and franchises which the lessor had as to the leased premises; the said company is also authorized to do an express business over its own and other lines of railroad and steamboats or other conveyances in and out of this State; and to acquire or put up, use and operate a line or lines of telegraph in this and other State or States, and to acquire, hold and enjoy all such property as may be proper, necessary or convenient in doing the said express or telegraph business *provided*, that by such consolidation the maximum in section six applies only to roads hereafter built.

SEC. 6. *Be it further enacted*, That said company shall have and possess the power of fixing from time to time, by its board of directors, the rates at which it will do express and telegraph business, and shall transport other express companies as may apply for transportation over its line at a just and reasonable rate of compensation, and also the rates at which said company will transport persons or property over its railroads and branches; *provided*, said last mentioned rates shall not exceed four cents per mile for each passenger, nor exceed the following rates on freights: Sixty-five cents per hundred pounds for transporting first or second-class freights one hundred miles or less; forty-five cents per hundred pounds for transporting third or fourth-class freights one hundred miles or less: thirty-two cents per hundred pounds for transporting fifth or sixth-class freights one hundred miles or less: (reference being had herein to the classification of freights now recognized and observed on the existing railroad line between New Orleans and Jackson, Mississippi.) But in no case shall the railroad company be limited to a less charge than twenty-five cents for the transportation of any passenger, or parcel, package or article, however short the distance. The rates so estab-

lished from time to time by the said board of directors for transporting persons or property as a railroad company, not exceeding the maximum rates for railroad business, as above set out, may be charged and collected by said company; *provided, further*, that as to lumber, coal, iron, salt, machinery, fertilizers, bricks, lime, agricultural implements, steam engines and boilers, and other freights transported in car-loads, rates may be made by special agreements between the shippers and the company, for such sums as they may agree upon; but in all such cases the same rates shall be given to any shipper of an equal quantity, at the same time, under similar circumstances of similar freight between the same points. Nothing herein contained shall prevent the railroad company from making such reduction of rates below the maximum herein fixed as it may elect to do, for the purpose of fostering, aiding and developing the resources of the country, penetrated by its railroads and branches.

SEC. 7. *Be it further enacted*, That the right of way is hereby granted said company to pass in and through the State of Mississippi, with said railroads, branches, spurs and laterals aforesaid, and to enter upon and use all lands, rocks, timber, earth, sand, gravel, water or other materials, which may be found on the routes selected, and which may belong to the State of Mississippi, and be convenient or necessary for the use of said railroads; and wherever said railroads or the branches, spurs or laterals aforesaid are located, over any lands belonging to this State, the title in fee simple, to one hundred feet on each side of the center of said railroad track or tracks shall vest in said company, its successors and assigns; and said company is hereby authorized to cause such examinations and surveys to be made as shall be deemed necessary to determine the most eligible route or routes upon which to locate its line or lines, branches, spurs or laterals, and to enter upon and appropriate all such lands and materials as may

be private property, which may be convenient or necessary for said road, together with one hundred feet on each side of the center of such road, laterals, branches or spurs; and in case the company fails to agree with the owners of such lands or materials upon the price to be paid for the fee simple title thereto, or in case the owner is under any disability in law to contract, or is absent from the county where such lands or materials are situate, or is unknown, the company may proceed to condemn such lands or materials as provided in section eight of the act, approved March 10, 1852, entitled "an act to incorporate the Mississippi Central Railroad Company," with all the rights and powers as therein provided; and upon such condemnation being had, the title in fee simple to such lands or materials, shall vest in the said company, its successors and assigns. Said company is also authorized to construct, maintain and operate its said railroads, branches, spurs and laterals under, over or across any and all streams and bodies of water in this State, whether navigable or not, which lie along or across the lines selected for said railroads, branches, laterals or spurs; and to erect, use and maintain ferries and bridges over the same; *provided*, that wherever a navigable stream or body of water is crossed by a bridge of said company, there shall be maintained a draw in such bridge sufficient to allow the passage of boats and water-crafts plying such waters, which draw shall be so operated as to cause no unreasonable delay to the passage of such water-craft; and the said company is also authorized and empowered, so far as this State can or may give such power and authority, to build, construct, maintain and operate of itself or with others, in or out of this State, a ferry across or a tunnel under, or a bridge over the Mississippi river at any point within this State, where its railroads, branches, laterals or spurs may reach said river, and to acquire and hold all such lands and

materials as are or may be necessary or convenient for landings, wharves, inclines or approaches thereto; and it may establish such transfer landings, wharves, approaches and inclines as are or may be necessary or convenient in transferring by boat or other water-craft, all or any freights, passengers, cars or rolling stock, loaded or unloaded, upon and across said Mississippi river or any other river or body of water within this State, and may own, use, operate and control of itself or others, all such steamboats, ferries or other water-craft as are or may be convenient or necessary in crossing such water or plying therein, so as to develop trade over its said lines of railroad.

SEC. 8. *Be it further enacted*, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State, necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the State treasury, to be dealt with as the Legislature may direct; but said company shall be exempt from taxation by cities and towns.

SEC. 9. *Be it further enacted*, That said company shall have power, and is hereby authorized to insure persons and property, or either, transported or to be transported over or on any part of its lines of railroad, and all other property coming, or about to come into the possession or control of said company for purposes of transportation, or incident thereto, or for storage in any of its depots, or storage houses, or wharves, and to charge and collect reasonable compensation for such insurance or storage, but no charge for storage shall be made on freights transported by them to their several railroad depots, until the consignee has had a reasonable time in which to remove the same. And it is authorized to erect or acquire, maintain and use such depots, storage houses, wharves, sheds, or other buildings or depositories in or out of this State, as shall be necessary or convenient in the exercise of the powers granted in this charter; and said company shall have power to construct and operate compressses and oil mills.

SEC. 10. *Be it further enacted*, That this company, be and it is hereby granted the right to run its railroads, branches, laterals or spurs into the corporate limits of any incorporated town or city, reached by the line or lines of said railroad, as they may hereafter be located, under the powers herein granted, and to build and operate such railroad tracks, across or along any streets of such incorporated municipality; *provided*, that such part of said railroad as shall be located in, across, under or upon any such street, shall be so constructed and operated as shall not unreasonably hinder its use as a street.

SEC. 11. *Be it further enacted*, That the board of directors, stockholders, executive committee and officers and agents of said company, may hold their meetings and transact the business of said company, in or out of this State, and may establish such offices as they may from time to time deem best, in or out of this

State. And any and all acts done by said company, its officers or agents, out of this State, shall be of the same force and effect as if done within this State.

SEC. 12. *Be it further enacted*, That no mortgage executed by said company shall protect its property against the collection of claims for damages done by its engines and cars to the persons or property of citizens and residents of the State of Mississippi.

SEC. 13. *Be it further enacted*, That unless said company shall construct and have in operation twenty miles of railroad within three years from the passage of this act, the Legislature shall have the right to declare this charter forfeited.

SEC. 14. *Be it further enacted*, That all acts in conflict with this act, or any part thereof, be and the same are hereby repealed, and that this act take effect and be in force from and after its passage, the public welfare requiring it.

Approved, February 17, 1882.

Office Supreme Court U. S.
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JAMES. H. McKENNEY.
CLERK.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,

v.

SAMUEL B. THOMAS ET AL., SHERIFFS AND TAX COLLECTORS, ETC.

ON WRIT OF ERROR TO THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

BRIEF FOR PLAINTIFF IN ERROR.

BY W. P. & J. B. HARRIS.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT OF THE UNITED STATES,

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ON WRIT OF ERROR TO THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT.

The plaintiff in error filed its bill in the Chancery Court of the First District of Hinds county, to enjoin the collection of taxes assessed upon its railroad property, as unauthorized and illegal. The illegality complained of was that the tax was in violation of the Company's charter, by which, it is claimed, that the property of the Company incident to its railroad operations, its stock, etc., etc., is exempt from taxation.

The case stated by the bill is a history of the legislation bearing on the subject, with certain matters of fact about the commencement of the work of railroad building, and the completion for operation of a part of the system of roads projected by the charter.

Record p 1, 2, 3 et seq

The charter was granted by a special law, approved February 17, 1882. Acts of 1882, p. 838. Rec p 2

We extract such parts of the charter as bear on the point involved, including the preamble as descriptive of the enterprise projected.

PREAMBLE.

"WHEREAS, The construction of railroads to, in, through and along the Mississippi river basin, and the Yazoo and Sunflower river basins, penetrating these and other alluvial lands in this State, west of the Chicago, St. Louis and New Orleans Railroad, and connecting them by railroad and branches with other railroads west, east, north and south, is deemed and hereby declared to be a work of great public importance and in strict accordance with the true policy and interest of this State, should be encouraged by legislation and liberality; and

WHEREAS, The physical difficulties of constructing and maintaining railroads to, across, along or within either the Mississippi, Sunflower, Deer Creek or Yazoo bottoms or basins, or the other alluvial lands herein referred to, are such that no private company has so far been able to establish a railroad and branches developing said basins and alluvial lands and connecting them with the railroad system of the country; now, therefore, in order to induce the investment of capital in the construction and operation of such a railroad and branches, and thus develop the resources of this State," etc.

"SEC. 2. *Be it further enacted*, That the said corporation shall also have, and it is hereby authorized and invested with the right and power to build and construct, and thereafter to use, operate, own and enjoy a railroad or railroads, with one or more tracks, into, along and across that part of the State of Mississippi, lying between the Mississippi river and the Chicago, St. Louis and New Orleans Railroad on such line or lines as shall be deemed best by the Board of Directors of the company hereby chartered; one of said lines or a branch thereof, to reach the Mississippi river at or near a point opposite Arkansas City if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans Railroad, one of said lines or a branch thereof to pass through Yazoo City, Mississippi; and said company shall have the right and power, and are hereby authorized to build one or

more branches or lines of railroads between the "Mississippi river and Deer Creek, and between Deer Creek and the Sunflower river, and between the Sunflower river and Yazoo river, in the direction of or to the north line of this State, and extend the same, or any one thereof in the direction of or to the south boundary line of this State, as shall from time to time in the judgment of said company be deemed proper; and shall also be authorized to construct and operate such spurs or laterals from or along such main line or branches, not exceeding one hundred miles in length, as may from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans Railroad and east of the Mississippi river, in this State; and the said company as soon as, and whenever from time to time they have located said line or lines of railroad or branches, spurs or laterals thereto, or any of them, shall file in the office of the Secretary of State a statement showing the general line thereof, so far as the same has up to that time been located."

SEC. 8. *Be it further enacted*, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond twenty-five years from the date of the approval of this Act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the Treasury to be dealt with as the Legislature may direct, but said company shall be exempt from taxation by cities and towns."

"Section 13. * * That unless said Company shall construct and have in operation twenty miles of railroad within three years from the passage of this Act, the Legislature shall have the right to declare this charter forfeited."

"Section 14. * * That all Acts in conflict with this Act,

or any part thereof, be, and the same are hereby repealed; and that this Act take effect and be in force from and after its passage—the public welfare requiring it."

At the date of this Act the taxation of railroads was separately provided for by the Mississippi Code of 1880, p. 194, under the heading "Taxation of Railroads." The bill points to this taxation in general terms. We give a synopsis of the sections of the Code necessary to exhibit the taxation which the general law imposed on railroad property at the date of the charter in question:

Section 597 provides that each railroad company operating a railroad in this State shall, on or before the second Monday in August of each year, file with the Auditor of Public Accounts a complete schedule of all its property, real and personal, setting forth the length in miles of its road-bed, switches and side tracks, showing the number of miles and fractions in this State, in each county, and in each incorporated town, and the value of the whole, and each part as herein subdivided, capital stock, bonded indebtedness, the rolling stock, depot buildings, workhouses and machine shops, car shops, and stationary machinery, and the county and town in which situated, and the land on which they are situated, together with all other real, mixed and personal property.

Section 599 requires: the Auditor, when this schedule has been filed, and also in cases when it has been refused, is directed to notify the Governor of the State of the fact, who shall proceed to convene the Auditor, Treasurer and Secretary of State, who, thus convened, shall assess the value of each railroad for purposes of taxation, and shall certify the same to the Auditor of Public Accounts

Section 600 provides the means of ascertaining the items and value of the property. This Board of Assessors is directed to value the entire road and property, that value is to be divided into the number of miles in the State, and the valuation for each county is to be according to the number of miles of the road in each. The number of miles for the State shall be the product for State taxes, and the number of miles in each county the product for county taxes; and, having thus ascertained the sums to be taxed, they shall certify the same and the facts to the Auditor.

Section 601 adds ten per cent. on the amount of taxes assessed against railroad companies failing to file schedules as directed by Section 597.

Section 603 provides that when the valuation so ascertained and certified has been furnished to the Auditor he shall ascertain the taxes due the State and counties, and notify the companies of the amounts due to the State, by letter or otherwise, and shall certify the sums due to the several counties to the Clerk of the Chancery Court of the county, and the amount due to cities and towns to the mayor thereof, and the sums so certified shall be entered on the collector's books, to be collected as other taxes; and the Auditor shall collect the taxes due the State, by distress warrants issued to any sheriff, authorizing the seizure and sale of personal property in the county; and, should the personal property be insufficient, the Auditor may sell the entire road and franchise, to the highest bidder, and the purchaser shall be put in possession.

Section 605. The county taxes are to be collected as all other taxes.

Section 606. "Railroad property situated in any city or incorporated town may be taxed for city and town purposes, upon a valuation thereof made upon the same basis as the property of individuals, and this section is to apply to the foregoing as well as to the following modes of taxation herein provided for."

Section 607 provides that every railroad accepting this Act, and annually paying to the Auditor of Public Accounts the taxes hereinafter provided for, and signifying their acceptance in writing, shall be exempt from all the foregoing provisions, except Section 606 in relation to cities and towns, and such payment shall be in full of all State and county taxes; fifty per cent. of the amount paid to be placed to the credit of the counties through which the railroad may pass, to be divided amongst them according to the number of miles in each. Lands owned by such railroad companies, and not used in operating the roads, shall be taxed as other property and for all purposes.

PRIVILEGE TAX ON EACH RAILROAD COMPANY.

Section 608. Each railroad company whose line is, in whole or in part, in this State shall, if it accept the provisions of this Act, pay to the State Treasurer, on warrant of the Auditor, on or before the 31st day of December in each and every year, a privilege tax, as follows. [Here follows the existing railroads in the State, their names being given and the sums required of each.] "Provided that no railroad company shall be subject to taxation under this chapter while the same is in process of construction; but if any

part of any road shall be finished and used for profit the part so finished shall be taxed, although the whole road may not be finished."

The Company organized under its charter promptly, and in 1884 had completed for operation a line from Jackson, Mississippi, on the Chicago, St. Louis & New Orleans Railroad, to Yazoo City, on the Yazoo river, and proceeding thence up the valley of the Yazoo river to Grenada county, had completed for operation in 1886 and 1887 one hundred and forty miles of road.

The Railroad Company had claimed exemption under its charter, and the claim had been acquiesced in by the revenue officers of the State during this time.

In 1884 the provisions of the Code of 1880, before referred to, to-wit: Sections 604, 607 and 608, were revised.

Section 604, so far as it provided for putting a purchaser of a railroad under the tax sale therein mentioned, in possession of the road, was repealed.

Section 607 was so amended as to give to the counties two-thirds, instead of fifty per cent., of the privilege tax.

Section 608 was amended by increasing the privilege tax for each of the enumerated railroads of the Code, and it was provided that all other roads not enumerated, and not exempt by their charters from taxation, should pay a privilege tax of sixty dollars per mile. Acts of 1884, pp. 29–30.

In 1886 the privilege tax for all railroads was increased 25 per cent. Acts of 1886, p. 23.

The Yazoo and Mississippi Valley Railroad Company was not mentioned in these Acts, but, if taxable, was embraced by the Act of 1884 by the language, "All the railroads not named herein, and not exempt from taxation by their charters, sixty dollars per mile."

The provisions of the Code of 1880 were substantially preserved.

At the succeeding session of 1888, the legislature passed an act general in its terms, but in fact intended to deny the claim of the plaintiff to exemption under its charter, and providing for the collection of back taxes. The first section is in these words:

"SECTION 1. * * That every railroad that has failed to pay the taxes for which the same was liable for any year for which it was so liable, such railroad not being exempt by law or its charter from taxation for such years, and so being liable to taxation, shall be assessed for, and shall pay an ad valorem tax to be assessed as hereinafter provided, unless such railroad shall within sixty days after the passage of this Act, pay the taxes for which the same was liable according to its charter or pay the privilege taxes for which the same was liable as follows: if a standard or broad gauge road for the years prior to 1884, eighty dollars per mile; for the years 1884 and 1885, one hundred dollars per mile: for the years 1886 and 1887, one hundred and twenty-five dollars per mile." R. 6

There is a less rate for narrow-guage roads. The road of plaintiff is of standard guage, and this Act places it in the scale of the roads of the first class mentioned in the Code of 1880, and the act of 1884, and the increase marked by the different years corresponds with the increase on roads of the first-class prescribed by the Acts of 1884, and 1886, before mentioned.

The remainder of the Act of 1888 is addressed to the mode of valuation, assessment and collection. This Act is confined to back taxes, and expires with the collection of the taxes for the year 1887, and the years prior to that date.

The bill was filed to arrest the collection of taxes for these years, or the application and enforcement of this Act against the plaintiffs' road on the ground that such taxation was a violation of its charter, and it alleges that the charter was accepted, and the company organized under it expended its money on the work, and was proceeding with it in good faith on the belief that it had an exemption by its charter, which took effect at its date, and that its exemption had not expired; that under this belief, which was shared by the revenue officers of the State, it proceeded to construct about 140 miles of road penetrating the swamp or delta country, though it had not by a "line or branch" road, extended to the Mississippi river, although its road, so far as constructed, had conformed to the scheme of the charter, and had reached great and beneficial proportions. The taxes assessed and attempted to be collected, are for

the years 1885, 1886 and 1887, and in advance of its completion, though on parts of its single line which were operated in these years for business as a carrier. The taxes so assessed amount to $58,000.

The bill claims moreover that the charter as respects this grant, is a contract irrevocable and protected by the contract clause of the Constitution of the United States; that the unwarranted application of the general laws—subsequently passed, as well as the application of the general laws in force at the time is equivalent to a direct repeal of the charter exemption. That it is an effectual abrogation of its privilege of exemption by means of authority exercised under the State.

The defendants are the sheriffs and tax-collectors of the several counties through or into which the road extended. The Attorney-General and other counsel of the defendants demurred to the bill. The grounds of the demurrer necessary to notice were, first, that the charter contained no absolute exemption, and that the event on which the eighth section was to take effect had not happened; second, that there was no power in the legislature to grant exemption to this railroad company, because there was at the time other railroads subject to taxation by a general law, bearing on the same kind of property, and the class of owners to which the complainant belonged thus making an unauthorized discrimination.

The demurrer was sustained, and the bill dismissed by the chancery court, and the complainant appealed to the Supreme Court of the State of Mississippi, and that court affirmed the decree of the court below; and to this judgment of affirmance the plaintiff, in error, sued out a writ of error under the 25th section of the Judiciary Act.

The Supreme Court of Mississippi put its judgment on the construction of the charter, as did the Supreme Court of the State of Louisiana in the case of the *Vicksburg, Shreveport & Texas Railroad Co., v. Dennis, 116 U. S., 665.*

II.

On the part of the plaintiff in error these points are presented:

First, that the 8th section of the charter grants an exemption from taxation, the period of exemption to begin at the date of the grant.

Second, that this grant has all the elements of a legislative contract binding on the State, and cannot be directly repealed, or destroyed—by the refusal of the courts of the State to give effect to the contract according to its terms, in the application of the laws cited in the previous statement, in such manner as to deny the existence of the contract, or to disregard its effect.

Third, under the contract clause of the Constitution of the United States.

ART. 1—Sec. 10. This court will for itself determine whether there is a contract, and as involved in this determination, whether there was power to make the contract, and what is its legal effect, and is not concluded by the decisions of the State court in the given case, construing the constitution and statutes of the State affecting the subject. On the second and third propositions we cite—

Bank v. Knoop, 16 How., 369.

Jefferson Branch Bank v. Shelby, 1 Black., 436.

University v. People, 99 U. S., 309.

Louisville & Nashville Railway Co., v. Palmes, 109 U. S., 244.

Furman v. Nichol, 8 Wall., 44.

Railroad Co., v. Dennis, 116 U. S., 665.

The first proposition rests on the construction of the 8th section of the charter of the plaintiff in error which is found in the preface of this brief, and the declarations, avowals, and terms employed in the section, render it novel and peculiar, and we find no precedent which, in our view, governs the construction; for, unlike the Louisiana charter in *Railroad Co. v. Dennis, 116 U. S., 665*, where there was but the naked phrase "after completion," without other indication of intention; we have here an entire section devoted to the subject of the taxation of the railroad property, the extent of the exemption granted as respects the kind of property, with a scheme of taxation which was to

begin after "the period of exemption herein prescribed shall have expired."

We contend that taking the whole expression of legislative purpose as contained in the section, its provisions, declarations and avowals, the legislative will is found, and that will fairly appears to be, that the exemption was absolute to begin presently, but that its duration was to be determined by one of two measurements provided, and the measure which could be first applied must be applied, and that the combined effect of the two parts of the clause of the section intended to express the duration o the privilege, is to give more than twenty years (as some time must elapse before the Mississippi river could be reached by a line or branch), but not more than twenty-five years from the date of the Act.

To render what we may say on the subject intelligible, we state that the opposing view discards all of the section except the granting words—all that precedes and all that follows them—and by this process the conclusion is reached that the whole section was dependent for its taking effect on the contingency of the company's extending "a line or branch therefrom to the Mississippi river,'" and as that has not yet happened, no exemption can be claimed.

We submit some argument on the question thus presented, and also, on the other point stated, to-wit: The power of the Legislature, under the State Constitution, to make a charter contract exempting from taxation the property of corporations for profit.

ON THE FIRST POINT.

The legislature which chartered the railroad in question was impressed with the wants of the district of country between the Chicago, St. Louis and New Orleans railroad, a road running north and south through the State, over its uplands, and the Mississippi river, its breadth being about fifty miles east and west, and its length more than two hundred miles north and south. No direct single line east and west from any point on the base, the Chicago, St. Louis and New Orleans road to the Mississippi river would

have fulfilled the objects of the charter. Such a line would have encountered the difficulties of railroad building through the swamp and across streams and over ground subject to frequent destructive overflows, and yet it would afford communication by rail to a very limited area of country. The connection of the system of roads proposed with the river, is spoken of in terms different from those employed as to Yazoo City, a perfectly feasible extension. The extension of a line or branch to the Mississippi river is to be accomplished if found practicable. It is characterized as doubtful and does not stand in the scheme projected as the paramount object; a *sine qua non*. It was doubtless a thing contemplated as desirable, but it was not absolutely required, and was not treated as essential to the development of the country. The term "practicable" is used as investors would understand the word—that is practicable with reference to the outlay and the return for it. It is *possible* to make a road anywhere on land. We affirm that the connection of the system with the Mississippi river was a secondary and non-essential object. It is not mentioned in the preamble which describes the scheme as one to connect the swamp with *railroads*.

So we contend that there is no foundation for the assumption, that this connection occupied in the system devised, such prominence, that the legislature was impelled to make the aid which the enterprise needed, and which is profusely promised, dependant on a connection with the Mississippi river. It appears in the charter as a thing which might be indefinitely delayed, and on *justifiable grounds*, abandoned, and yet much benefit accrue to the swamp country from lines connecting railroads only. Indeed, it is clear to any comprehension that the swamp country, under the ample provisions and powers granted in the second section, could be thoroughly de[redacted]ped by a system of roads without contact with the river at [redacted], and aid to a road or roads was manifestly intended without regard to ultimate extension to the Mississippi river.

We now approach the eighth section of the Act, which it

will be perceived relates entirely to the subject of the taxation of this road or roads and exemptions. The usual scope of such special regulation of taxes is to make the regulation exclusive of all other regulations. They are intended to be complete for the particular enterprise and corporation. It is a rule that when a particular Act assumes to regulate the entire subject of it, it is exclusive.

Buck vs. Swan, 40 Miss., 268; Gibbons vs. Brittenum, 56 Miss., 232.

This section, by the avowal in the beginning, by its terms and scope, was to be all the law for this corporation as to taxation and exemption. It declares that the property which the investors are invited to create, when it shall come into existence, shall stand toward the tax laws existing, and to follow, under two conditions—one of exemption and one of taxation, and exemption shall precede taxation—exemption first and taxation afterward.

The avowal of an intention to make *certain* the taxes and burdens which are to be borne and those to be foreborne, cannot be rejected. The investors are told by it that they need not explore the revenue laws of the State existing, nor speculate as to those which may follow, but to look to the terms of this section as a certain guide, and in the face of such a declaration, and in view of its object silence is negation; as nothing pertaining to taxation and exemption was to be left unsaid, nothing is to be implied. It cannot, in the face of the explicit declaration contained in this section, be maintained, that in spite of it, the legislature intended to reserve tacitly the power to tax the property to be brought into existence at will, to an indefinite extent, and for an indefinite time, that is, until the happening of an uncertain event in the future, to-wit: the crossings of the swamp country by a line or branch to the Mississippi river.

The explanation of an omission so important, after an avowal so explicit, is, that the Legislature assumed, that the exemption was to have its natural and usual beginning at the date of the grant. The section is pregnant with this

idea. It speaks only of a taxation after the period of exemption herein granted shall have expired. The suggestion that when exemption is postponed to a future event, taxation, until the event happens, must be implied, begs the question in issue. We urge the omission to *speak* as a reason why the exemption was *not* to be postponed, and taxation was to await its expiration. The peculiar character of the section, novel and unusual in its provisions and avowal, reverses the rule, and excludes those inferences and implications in favor of taxation when an Act is *merely* silent as to the particular subject of taxation, or as to a time when taxation shall begin. We call attention to the fact that the taxation which is to follow exemption, differs in one important particular from that which, according to the opposing view, is to fall on the property before exemption. If it is conceded that the idea of valuing the road as a unit and paying the whole tax in a lump sum to the Treasurer is merely a convenience as it stands in the eighth section, still it is a change, but, in addition to this, there is an exemption perpetual in duration, of taxation by cities and towns. Whereas, by the then existing law, cities and towns were allowed to tax railroads. This is to have the heaviest burden fall on the enterprise while in progress, and the lighter after the most difficult part has been accomplished.

The suggestion that the enterprise in progress was aided by the general law exempting railroads in process of construction from taxation, must be measured by the qualification, that these words are limited to such parts of the line as are unfinished to completion for use. These words are followed in the general law of the Code before cited, "but if any part of any road shall be finished and used for profit the part so finished shall be taxed, although the whole road may not be finished."

Code, 195, § 608.

This exemption is not to be regarded as exemption during the time of outlay in the enterprise. The privilege is of very little practical value. The Legislature knew the course of railroad making in the country. Starting from

some important center or base, the road progresses and stations and villages spring up. The people on the line eagerly demand transportation, so there is a finishing for use of the line in progress. The application of the general law of railroad taxation does not supply or render needless the aid promised. This road, for example, is now complaining of a very heavy taxation imposed in its progress to completion, and before it is finished, and during the period of heaviest outlay. It was never the course in this State to tax unfinished work. The exemption is illusory, and when its practical value is estimated it will be apparent that the Legislature could not have regarded it as a contribution to the enterprise of such exceptional difficulty, as it was regarded at the time of the charter. See the extent of the privilege tax of 1885, 1886 and 1887 bearing on an unfinished road, Act of 1888 before cited.

The eighth section of the charter, viewed as a whole, evinces an intention that exemption shall begin at the date of the Act. Its terms and declarations can be reconciled on no other rational conception of its import.

Assuming the beginning point of the period of the exemption to be at the date of the grant, and that taxation was to begin only after the period had expired, it was important that the duration should be fixed, and the peculiar form in which that duration or extension from the date of the grant is expressed, is due to a purpose to give as much of the standard period of exemption after the road reached the river, as might be obtained out of a whole period of twenty-five years.

It is not uncommon to express duration with reference to an event in the future by fixing a certain number of years after the event in the computation of a longer period. The privilege is to last for twenty years from one event, but not to extend over more than twenty-five years from another event, the approval of the Act, altogether. The Legislature assumed, in adopting the form and words of the grant, that the exemption was to begin at the date of the Act. If the grant had been made by one part of the granting clause, the first, for a term of twenty years from the com-

pletion of said railroad to the Mississippi river, the period of taxation would have been indefinitely postponed, and might not happen at all if the connection with the river should be found impracticable by the investors. It was therefore necessary, on the idea that, left without other words, it would give an exemption of indefinite duration, and to taxation indefinite postponement that the words "but not to extend beyond twenty-five years from the date of the approval of this Act" should be added. The effect of the two parts being to bring the actual duration within the period of twenty-five years from the date of the Act. It is a common use of "*from*" to convey the same idea as "*beyond*." The Legislature was expressing extension from a point assumed, and we find the words extend "beyond" and "from" as conveying the one idea. The words "but not to extend" apply not to the definite term of twenty years, but to a period of exemption of contingent duration. The *privilege*, the dimensions of which are measured by the joint effect of the two parts of the granting clause, was not, by the purpose to give it a certain extension beyond an event in the future, to be made to cover a period of enjoyment longer than twenty-five years as the utmost limit. If the design was to give twenty years on the *condition* of reaching the river it would have been needless to qualify the first part, and the supposition of the purpose to make the privilege dependant altogether on the doubtful event, a supposition which belies the spirit and soul of the charter, may find an equally hostile temper in the added limitation in the second part as a penalty on delay in reaching the river, for it would in that view operate to discount the twenty years by every year of delay over five years in reaching the river.

Looking at the Acts of the Legislature of 1882, we search in vain for the evidence of a spirit so grudging, as to this most desired work of greatest difficulty, that aid promised with energetic profusion, should be delayed until the chief difficulty had been surmounted, and only on condition that without aid it should be surmounted, and if delayed should cut down the *reward* promised.

It is only by a complete surrender to the idea that the

legislature intended to falsify its promises that we extract from the 8th section of the charter the startling result of a heavy, unlimited taxation reserved as a *vis a turgo* and a possible exemption and then a milder taxation.

This feat is accomplished by cutting away all the 8th section except the words "shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river; but not to extend beyond twenty-five years from the date, etc.," and repelling the idea that extension alone was in the mind of the legislature and that the words were intended to fix the termination and not the beginning of the exemption. With the section thus dislocated or mutilated, it is hoped to construct a reasonable doubt whether an absolute or contingent exemption was intended. And the contingent exemption being more favorable to the State as the matter is viewed after the fact, that consideration will turn the scale.

The 8th section, by this view, is not to take effect in any of its provisions unless the event, considered doubtful at the time, should happen, and that event being still delayed, the section is no protection from taxation, notwithstanding much work has been done, work of great public utility, in which the State promised assistance.

The Mississippi Legislature, of 1882, granted many railroad charters. There was in all of them, with perhaps one or two exceptions, an exemption from taxation for twenty years; that seemed to be the standard period. The charter to the Yazoo and Mississippi Valley Railroad was the earliest charter. There is much copying from this charter, and the one we select, because it relates to a railroad now in existence from the Chicago, St. Louis and New Orleans Railroad at Durant, Holmes county, to Aberdeen, in Monroe county, a road running north-east and through the uplands of the State east of the Chicago, St. Louis and New Orleans road.

Section 8. * * "that in order to encourage the investment of capital in the works which the said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an induce-

ment and consideration therefor, the taxes and burdens which the State will, and will not impose thereon, it is hereby declared that said company, its stocks, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted, not to include oil mills and compresses, shall be exempt from taxation for a term of twenty years from the date of the approval of this Act, and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate of other property in this State. All of said taxes to which the property of said company shall be subject in this State, either for county or State, shall be collected by the Treasurer of the State, and paid into the treasury to be dealt with as the legislature may direct; but said company shall be exempt from taxation by cities and towns."

We do not find it easy to discover an intention to be less favorable to the more difficult and doubtful enterprise, than to one perfectly feasible in all respects; the feasible project gets an absolute exemption for twenty years, while the one, the difficulties of which are emphasized, according to the opposing view, gets an exemption for twenty years contingent on surmounting the difficulties and reaching the Mississippi river, and withal subject to be discounted for every year over five years allowed to reach the river.

A contingent exemption would be a departure from the ordinary rule. The policy of the State has been to grant exemption to railroads in their charters, for a limited time. Twenty years is ordinarily given for a railroad in any direction in the State. It seems to be considered that any railroad that is worth operating, pays for the exemption by its indirect benefits to the country it serves. If it falls short of completion to a known terminus, or fails to reach points on the projected line indicated in the charter, the exemption for so much as has been constructed, is never forfeited. If the line is short, the concession by the State is small, and compensated to the public in its use.

ON THE SECOND POINT.

All that is contained in the constitution of Mississippi on the subject of the taxation of property, is found in two sections of article 12. See Code of 1880, p. 35:

"SEC. 13. The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

"SEC. 20. Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value to be ascertained as directed by law."

This article in other sections evinces a purpose to guard the State and counties against becoming burdened with debt by loaning credit to, or becoming stockholder in corporations or associations, and against the creation by them of a paper currency. Secs. 5, 12, 14.

It is worthy of note that the constitution is silent as to charters of incorporation, reserving no power over them, of repeal or alteration in any respect. It is silent as to the power to grant exemptions from taxation; and so far from exhibiting any jealousy of charter contracts, or alarm at the scope given to the contract clause of the constitution of the United States by the Supreme Court of the United States, the constitution of Mississippi nowhere speaks of contracts except to forbid the legislature to pass any law impairing their obligation. Art. 1, sec. 9.

The bargaining away of the public powers was not an evil of such proportions, in the opinion of the Constitutional Convention as to demand restrictions to be placed on the discretion of the legislative body.

The contract clause of the Constitution of the United States is freely endorsed with its load of judicial exposition, and in full view of its bearing.

There is found in many State constitutions of that period, (1869) restrictions of the power to grant exemptions from taxation, as leading to mischief, in the use of that admitted power, but in the constitution of Mississippi there is no attempt to deal with the subject at all.

Its framers saw the evils of a paper currency, dependent

on uncertain security for its redemption, and the evils of public debts then conspicuous in many States, and especially in the neighboring State of Tennessee, and proceeded to guard against these by language directed unmistakably to that object, as is to be expected where, by an organic law, power is to be defined, or regulated, to avert known mischiefs.

If the purpose was to revolt against the doctrines of the Supreme Court of the United States, as to charter contracts, there was in a constitution before them—the constitution of Iowa—a short form for making all charters repealable. "All charters of incorporation shall be subject to repeal."

If the property of corporations for pecuniary profit was to be excluded from the benefit of exemption from taxation, the purpose would have been expressed thus: "The legislature shall not exempt from taxation the property of corporations for pecuniary profit."

If the idea was to allow exemptions of such property, but to make them repealable, we would expect to find it expressed in these words: "All exemptions of property from taxation shall be held at the will of the Legislature."

If this qualification was intended to apply only to corporations for pecuniary profit, the idea would find expression thus: "All exemptions from taxation of the property of corporations for pecuniary profit shall be repealable."

The idea is simple, and would have taken the form of expression supplied by average capacity, applied to examples everywhere to be found, of apt language for expressing it. We do not find it.

It seems to be very clear that jealousy of the contract power—jealousy of corporations, jealousy of the privilege of exemption, find their roots and germs elsewhere than in the convention which framed this constitution.

The meaning of the two sections of Article 12 heretofore quoted, (Sections 13, 20,) was discussed in *Mississippi Mills v Cook, 56 Miss. Rep*, 40, and the conclusion reached by two of the three judges, that exemptions by charter contract

of the property of corporations for pecuniary profit are forbidden by the first mentioned section (13), that is: exemptions by contract binding on the Legislature. The question has not been touched by that court since, and until 1884 we find no instance in which a repeal of a charter exemption has been enacted. There was a writ of error to the Supreme Court of the United States in *Mills v Cook*, but at a session of the Legislature occuring while the writ was pending there was a legislative compromise, by the terms of which the writ of error was dismissed by the plaintiff.

The result in the case cited cannot be regarded as a settlement of the question. There was not only the fact of dissent expressed on the bench, at the time, but the reasoning of the dissenting opinion takes from the decision of the majority all basis in logic or in precedent.

There is a concession that the exemption of the property of individuals, not associated under a charter, by legislative grant, whether repealable or irrepealable, is not prohibited, nor is the exemption of corporations for profit forbidden. Exemptions from taxation is admitted not to be an evil. It belongs to the taxing power as part of it. The exemption of such property is conceded not to be a discrimination under the "equal and uniform" clause as it has been held to be elsewhere. The conclusion, therefore, that exemption by charter contract is prohibited, seems fanciful and strained.

It is indeed curious that constitutional prohibition in reference to a matter of such great practical importance should be discovered in a constitution where the subject of exemption is not mentioned, nor any equivalent expression employed. A limitation of an admitted power of great practical value, and constantly exercised, is thought to be discovered, although none of the known methods of giving expression to it is employed.

We mention here that the Iowa case, brought into view in the discussion in *Mills v Cook* was decided after the Constitution of Mississippi had been adopted. That de-

cision was made in 1874 It does not furnish a rule for interpreting the Constitution of Mississippi of 1869.

We ask attention to the dissenting opinion of Mr. Justice Chalmers as it appears in the case reported, and before cited. We can add nothing to the argument there, and think it needs no support.

We suggest, however, that the compound character of the property of private corporations, the franchise, the stock, the visible and tangible property, the plant, etc. etc., admitted of oppressive, or double taxation, and lead to what may be termed commutation of taxes, the adoption of certain standards of valuation of the whole enterprise in which the public sometimes suffered. Cooley Taxation 877 et seq

With these known peculiarities of the property of corporations, and the known practice in taxation, the convention might well declare, that valuation and taxation of such property, should be arrived at in the same manner as in the case of individuals, by finding the valuation of everything that would be answerable for debts, and the taxation by the same standards applied to individuals.

It is irrational to proceed on the idea that a purpose hostile to contract exemptions must be attributed to the convention although no traces of it are anywhere found.

It cannot be assumed that the legislature of 1882, in adopting all the usual terms of contract stipulations, stating the inducement and consideration on both sides in respect to a public work pertaining to the "public welfare" supposed it was not making terms that were binding, or that section 8 stood in a different plight from the stipulation as to freight rates and passenger rates of transportation, which has been held to be a bargain, in the charter under consideration.

Stone et. al., v. Yazoo and Miss. Valley R'y Co, 62 Miss., 607.

It cannot be affirmed that the investors entered into the stipulations on the idea that they were not binding. Indeed the idea most prominent is that the enterprise was one of exceptional public importance, and the legislature was offering the inducement of inviolable pledges to

those who would undertake it, and there is something of force in the view expressed by the judge of the circuit court of the United States in an opinion recently announced referring to this enterprise, that it had more of a public than a private character. The terms of the charter have all the character of a proposal, not to incorporate a company only, but a proposal to the company to undertake a public work on certain terms. Such a proposal made to individuals, or associations not "incorporated" if accepted would bind the legislature; why not if accepted by a corporation?

We insist that if the exemption claimed is found in the charter, the application of the tax laws to it by State authority, stands on the footing of a repeal and the decision of the State court uphold the authority.

W. P. & J. B. HARRIS,
for Plaintiff in Error

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No. 1086.

UNITED STATES OF AMERICA.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,
PLAINTIFF IN ERROR.

VERSUS

SAMUEL B. THOMAS ET AL., TAX COLLECTOR, ETC.

BRIEF ON THE MOTION OF DEFENDANTS IN ERROR TO DISMISS THE CASE FOR WANT OF JURISDICTION.

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The counsel for the defendant in error having interposed their motions to dismiss the writ of error in this case for want of jurisdiction to review the judgment of the Supreme Court of Mississippi, because of the absence from the record of any federal question decided, and the motion having been made after the filing of his brief on the merits, the counsel for the plaintiff in error supplements the brief already filed, by submitting this on the point made by the motion on the question of jurisdiction.

1.

The corporation, plaintiff in error, is not named in the act of 1888, which has been applied to it by the decision of the Supreme Court of Mississippi, but the intention of the legislature to embrace the plaintiff in error in the class of railroad companies which had "escaped taxation" is asserted by that court. The effect given to the act, is the act. The intention imputed to the legislature is the intention of the legislature, for the purposes of this case and question.

It therefore follows that the act of 1888, though general in its terms, was intended to deny the claim of exemption founded on the charter contract.

2.

If the act had referred to this railroad in terms, or if it had by its language required all railroad companies to pay taxes; or the revenue officers to collect taxes from all railroad companies which had not paid taxes during certain years in the past, the validity or invalidity of the act as applied to the plaintiff in error would have been dependent on the same inquiry which arises here, Is there a charter contract, affected by the subsequent law as it has been interpreted and applied by the State court?

If there is no contract of exemption, a law directly requiring taxes to be collected of the railroad company would be valid. If there is such contract the law would be void as applied to this company. It is the judicial application of the subsequent law to this railroad company, that makes the law a violation of the contract, if there be a contract.

3.

It is not material whether the judicial application of

the law is based on the ground that there is no binding contract at all, or upon a view of the contract by the State court, which is supposed to admit of the application of the law. The question is, by what court is the existence of the contract and its scope and obligatory terms to be determined?

The general rule that the interpretation given to State constitutions and laws, by the courts of that State, will be followed by this court, does not apply to cases arising under the contract clause of the Constitution of the United States.

In *Ohio Life Insurance and Trust Co. v Debolt*, 16 How, p. 432, this court speaking of the rule of interpreting State laws, said: "But this rule of interpretation is confined to ordinary acts of legislation, and does not extend to contracts of the State though in the form of laws. For it would be impossible for this court to exercise any appellate power in a case of this kind, unless it was at liberty to interpret for itself the contract between the parties." This is a settled doctrine. The most striking and instructive case on this point is *University v. People*, 99 U. S., 309. In that case the constitution of a State and a law passed under it, of a general nature were made to apply by the State court to a corporation or to its property by an "erroneous construction of the contract" of exemption conferred by a former law under a prior constitution. If the construction of the contract by the State court had been correct, the subsequent law was valid, but if erroneous it was clearly invalid if applied to the corporation claiming the exemption. So this court held.

A law valid as applicable to a class of subjects, may be invalid if applied to a particular subject, for to so apply it is to hold that the legislative intention was to give it that application. In this sense the decision or

judgment of the State court may be said to impair the obligation of a contract.

In the case of *Bank v. Knoop, 16 How. 369*, this court speaking of the application of a general law taxing banks to the particular bank in that case, which had an exemption, recognizing the effect of the judicial application of the law, said, "The decision of the Supreme Court of the State is before us for revision and if their construction of the contract in question impairs its obligation we are required to reverse their decision." p. 391-2.

It may be conceded that the erroneous construction of contracts by State courts standing alone, does not authorize the revision of their judgments here; yet where the misconstruction is made in the application of subsequent laws to the contract, and the contention is that the law so applied, is applied because of the erroneous interpretation of the scope of the contract, the judgment is reviewable here.

The inquiry whether this is a contract and what is its scope, is one always made here, in this class of cases because the validity of the subsequent law depends on this inquiry—and, whether though apparently valid it is applicable to the subject protected by the contract set up in the record, depends on the same inquiry. It is the giving effect judicially to the law, as one intended to apply to the given subject, that makes the case for the appellate power of this court, and not the law, which is harmless until so applied.

It is not material that the subsequent law is harmless, or so worded as to be harmless in itself, or that it might be inapplicable if *rightly* construed and applied. The contention of the plaintiff in error is, that it cannot be applied to its property because it is protected by a contract of exemption. The State court

has applied the law to the railroad of plaintiff in error on its view of the contract with the State, and has upheld proceedings under the act against the plaintiff in error by the revenue officers of the State, on its construction of the charter contract, denying that the company is entitled to the exemption claimed under the contract. On the true construction of the contract the interpretation contended for by the plaintiff in error, the act is invalid if intended to apply to it.

The case of *Railroad v Dennis, 116 U. S., 665*, was the application by the State court of general revenue laws, to a corporation claiming exemption under its charter from taxation, as we understand the case as reported. The laws were valid as applied to other railroad companies or corporations.

The contest was about the meaning and scope of the contract of exemption. If the plaintiff in error was right in his view of the contract, then the act was invalid as to it. but if the State court was right in its view of the meaning of the contract, then the general law was valid as applied. This court entertained the writ of error, and exercised the right to examine the charter contract for itself and came to the conclusion that the State court had rightly construed the contract and affirmed the judgment by a majority. The dissenting judges holding that the State court had erroneously construed the contract.

The case now before the court is that of a general law applicable to a class of railroads. The judgment of the State court gave effect to that law as being intended to apply to this railroad company—a law with such intention and application is invalid, if the railroad company has a contract of exemption, as claimed by it.

If the court finds that the State court has construed

the statute in question here directing taxes to be assessed upon and collected from railroads as intended by the legislature to apply to this particular company, effect has been given to the law, just as though the legislature had named this company in the act. The intention ascribed by the court becomes part of the law. It is claimed that the act with such intention and effect violates the charter contract erroneously construed by the State court. This gives the ground for revision here.

The counsel for the defendants in error seek to avoid this conclusion by insisting that the act of 1888 which is set out substantially in the bill and which is found in the State acts of 1888, p. 49, does not impose any tax and provides only for the enforcement of revenue laws existing at the date of the charter; and in short that it is no new imposition of taxes though there is a new law, relying upon the precedent afforded by

Kennebeck Railroad v Portland R. R., 14 Wall. p. 25.

Dessauaure v Gillard, 127 U. S., 216.

New Orleans Water Works v Sugar Co., 125 U S., 18, and cases there collected.

There is a mere semblance of analogy.

The peculiar character of the charter exemption of the railroad is, that it not only binds the State as to future burdens imposed by subsequent laws, but to abstain from enforcing those imposed by laws existing at its date. It is a contract to suspend the existing laws during the period of exemption, as well as to abstain from future impositions. Such is the general scope of these contracts. It is a palpable breach of the contract to direct by legislative authority that the existing laws be enforced by means of an assessment to be made and taxes to be collected on such assessment. It is a legislative direction to charge the prop-

erty of the railroad company by an assessment when the contract forbids it.

The assessment is practically the charge of taxes. It is the imposition of the tax in truth.

It is the settled law of Mississippi that the assessment creates the charge, and without it there can be no delinquency and no collection. It is a fundamental requirement.

Davis v. Varnarsdale, 59 Miss., 367, 369, 370.

Virden v Bowers, 55 *Miss.*, 1

On pages 6 and 7 of the record will be found the first section of the act of 1888, and the bill, as will be seen, refers to the act by its page in the statute book, and gives the substance of the other sections. R. p. 7.

The effect of the act as applied, is to put in force every revenue law increasing the *ad valorem* tax required by the constitution of the State, enacted since the act incorporating the plaintiff in error, and prior to 1888, and every act increasing the commutation railroad tax. It especially puts in force a law of 1884 repealing all railroad charter exemptions in furtherance of a scheme of taxation for levee purposes, embracing all real and personal estate. An act of 1884, Acts of 1884, p. 140, in the fourteenth section, contains this language, after directing railroads to be taxed: "Any exemption from taxation, donation of taxes or other such provision contained in the charter of such railroad company or other corporation * * * to the contrary notwithstanding."

The complainant does not in this case complain of the levee tax; and the subject is mentioned in order to show what is the effect of a law putting revenue laws generally in force against the railroad company.

It will be noted that the original bill set out in the record, pp. 4, 5, alleges that the railroad company had

not been charged with taxes, nor required by the revenue officers to pay taxes. Its property had never been assessed. It had never been valued during the four or five years of its existence. Its exemption had been conceded. It was necessary for the legislature to fix its privilege tax, or commutation tax, and to provide for the valuation and assessment of its property. Without such a valuation and charge, no tax could be constitutionally collected. Indeed while general revenue laws may authorize the tax, it substantially is imposed only by the assessment or law providing for assessment.

The subsequent act directing former laws which, on the contention of the plaintiff in error are inoperative by the contract, to be put in force against the railroad company, by assessment of taxes, is a violation of the terms of the contract as construed by the plaintiff in error, and, as we contend, construed correctly.

It would be an easy method of defeating the contract clause of the constitution, by legislative action, in the plainest case of exemption from taxation, by passing a law to put the laws existing at the date of the contract in force against the other contracting party, general laws for the collection of taxes on property, real and personal, on the pretence that the judgment of the State court giving effect to the subsequent legislation, was in fact but the enforcement of laws in force at the date of the contract.

It is begging the question. If the contract existed, the laws did not exist as against the railroad company. The contention is, that the contract, if valid, suspended the existing revenue laws or rendered them inoperative. The Constitution of the United States operating on the contract, suspended the laws, and re-enacting them or putting them in force, by State authority is a viola-

tion of the contract and of the constitution. It would be strange indeed if the judgment of the State court giving effect to the subsequent law and upholding proceedings under it, was not reviewable by this court.

The bill of complaint in the suit charges that the assessment of the property was made under the subsequent law, by machinery and tribunals appointed by it, and that the commutation tax was fixed by that law. These were the proceedings arrested on the prayer of the bill. The bill raised the question directly, pointing out the contract, giving it a construction and complaining that the subsequent law in *subjecting* the property to assessment, was equivalent to repealing the charter, or denying its legal effect. The decision of the Supreme Court of Mississippi upheld the proceedings thus challenged on a construction of the charter that no exemption was contained in it.

It is not material to jurisdiction in this court, that the State court construed the contract rightly. The federal question was before it, and decided against the plaintiff in error, and no independent ground appears on which the judgement could rest The contract was denied, and the subsequent law upheld.

The cases cited from 125 U. S., 127 U. S., and 14th Wallace. show that not only was there a question independent of the federal question in the record, and in the case before the State court, but that the question was broad enough to cover the case, and that the State court actually decided it to be sufficient to dispose of the case. Nothing of the kind appears in the case now before the court. We repeat that the law of 1888, fixing the commutation tax, directing the charging of the railroad property by an assessment, thus assuming that there was no exemption by the intention imputed to the legislature in enacting it by the State court, is, in

the language of the bill, equivalent to a repeal of the charter contract; however, such purpose may be sought to be disguised. If the railroad company has a contract of exemption, that contract is abrogated if the proceedings under the act in question shall be upheld. To direct taxes to be assessed against the railroad when taxes or tax laws are suspended by contract is the imposition of the taxes.

The case of *University v People* before cited is authority of the greatest weight for the proposition that on a question of contract by a State through a law, this court will decide for itself the *constitutional capacity* of the legislature to make the contract, as involved in the principal inquiry, and cannot be controlled on such a question by the judgment of the State court.

This is of course true of the judgment reviewed on writ of error. We understand the principal to go further, and it is carried further by the case of *Carroll County v Smith*, 111 *U. S.*, 556.

It may be stated that the fact that the State court has put a construction on a constitutional provision in a contract case, is influential in this court as authority only where such decision has been recognized as a precedent and by practice to an extent that it must be regarded as established on a solid basis of judicial and legislative recognition.

There has been no subsequent judicial recognition of the decision of the Supreme Court of Mississippi in *Mississippi Mills v. Cook, 56 Miss., 40.* Nor has there been any legislative practice bearing upon it. The Constitution contains no reservation of power to repeal or alter charters, nor any prohibition to make contracts, but does contain a very positive declaration that the legislature shall not violate contracts. There

prohibition.

is no prohibition to grant exemptions, and since the decision in that case exemptions in charters have been frequent.

The decision of the State Court in the present case does not recognize the case of Mississippi Mills v. Cook, nor does the act of the legislature of 1888, in question here, use any words of repeal. On the contrary, viewed without the *influence of the decision in this case*, it recognizes the inviolability of exemptions.

The case cited, therefore, has no external support, and is without the recognition necessary to give its doctrine the stability of settled constitutional law. It was by a divided court, with a dissenting opinion, which overthrows, as we think, the artificial reasoning and refined logic of the majority, not themselves agreed. To avoid repetition, beg to refer to the brief of W. P. and J. B. Harris on the principal question, p. 18.

The legislature reserved no right to repeal in the charter of the railroad company. The section granting the exemption is in its terms and stipulations a contract as to the taxes which the railroad shall bear when it shall be brought into existence. The consideration is set out. The legislature supposed it was doing what the act declares—making a contract with the railroad company as to what taxes and when taxes would be exacted.

The decision in *Mills v. Cook* and the position it held in the law and jurisprudence of the State was not such as to admonish the world that the legislature could make no binding contract of exemption with corporations; and this charter was accepted on the belief that a binding contract was made.

The isolated case by a divided court, asserting a lurking principle in the Constitution giving power to

make contracts of exemption and to break them, is not sufficient to put the decision in this case beyond the pale of revision by this court.

That the public powers residing in a sovereignty may be limited by a written constitution is the established American idea, but as these exist for the benefit of the people, a limitation of them by constitutions must be as clear and as obvious as must be the intention to surrender them, or suspend them by a contract. Certainly the same rule ought to apply.

This court is the guardian of the rights protected by the contract clause of the Constitution. It knows no superior. The object of the provision of the Constitution of the United States protecting contracts would be defeated, unless this court asserts and exercises the power to judge of the contract and of its violation.

NOTE.—The act incorporating the Yazoo and Mississippi Valley Railroad Company is cited by its date and title in the bill of complaint (Record, page 2), and this reference is followed by a recital, or what was intended as a recital of certain parts of the charter, pages 2 and 3. In these parts, as given in the bill as it appears in the record, there are some omissions of words and some substitution of words. These inaccuracies are unintentional and have crept in by mistake or oversight. The variations are here noticed, and the court is asked to refer to the charter, to be found in the acts of the Mississippi legislature of 1882, p. 838.

On page 2 of the record appears the preamble in which "the" is omitted between "with" and "true." "With the true" is the language. On the 8th line the language of the act is "legislative *sanction* and liberality." The third paragraph of the preamble omits "maintenance" after "construction" in the second line; should be, "construction, maintenance and op-

eration," and the word "wealth" should be inserted after resources in the third line, and the "&c" should be discarded.

We note mistakes on the third page of the record purporting to give the second section of the charter.

In line 7 "the" is used for "said" and "thereto" is used for "therefrom" in the eighth line. The language of the act is "one of said lines or a branch therefrom."

In line 9 the word "practical" is used for "practicable."

In line 12 "railroad" is omitted; should be, "lines of railroad," and "thereof" should be "therefrom," and the words extended to" should be used before "or pass through." "One of said lines of railroad or a branch therefrom be extended to or pass through," is the language of the act.

In the 20th line "the" should be "said."

In line 22 the word "main" is omitted before "line." It should be, "main line or branches."

On the same page, reciting the 8th section of the charter, in the 41st line the word "but" is omitted; it should be, "but not to extend."

The 43d line should be corrected so as to read, "the property of said railroad may be taxed."

W. P. & J. B. HARRIS,
For Plaintiff in Error.

Office Supreme Court U. S.
FILED.
OCT 28 1889
JAMES. H. McKENNEY,
CLERK.

1086.

UNITED STATES OF AMERICA.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY

v.

SAMUEL B. THOMAS, ET AL., SHERIFFS AND TAX COLLECTORS, ETC.

In Error to the Supreme Court of Mississippi.

On Motion to Dismiss Writ of Error.

Brief for Defendants in Error.

By HOOKER & WILSON.

Marcellus Green

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1086.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

VERSUS

SAMUEL B. THOMAS ET AL., SHERIFF AND TAX COLLECTOR.

Brief of Hooker & Wilson, Attorneys for Appellee, Sheriff of Holmes County.

This case comes up from a decree of the chancellor sustaining the demurrer of defendants to the bill of complaint filed by the appellant, enjoining the collection of taxes that were about to be collected by the sheriff of the various counties through which it was operating its line of road.

The assessment was made under the act of the late Legislature. (Acts 1888, p. 49.)

The complainant files its bill, claiming an immunity from a common burden imposed on all property of like character in the State, on the ground that it is exempt from such common burdens by its charter for a period of twenty-five years from the approval of the charter, subject to be lessened by an early completion to the Mississippi river.

We assume that the Legislature meant to include in the act of 1888 all roads not exempt by law or by charter; that is, that all roads not exempt by law or by a valid clause of exemption in their charter, should be assessed and pay taxes. If the exemption clause of the charter was in excess of the legislative power it was inoperative and void and conferred no real exemption from taxation. It was exempt neither by law nor by its charter from its share of the common burthen. It could have no more privileges or immunities in regard to its liability to taxation than if its charter contained no such clause; and a general law selecting all objects of like character for taxation would embrace and render liable to taxation the object thus sought by its charter to be exempted. Its exemption clause could avail nothing. It would be but "sounding brass and tinkling cymbal."

Now we assume that the Legislature then, by its act, designed to reach all railroad corporations that were subject to taxation in 1886, 1887 and 1888, under the general revenue law then in force, but had escaped taxation for those years, unless such roads were exempt from taxation.

Two points are raised by the demurrer:

First. Whether there is any exemption of this road under its charter for any period of time.

Second. If this railroad is exempt by its charter, when and for what period does it run and when does its exemption period commence?

Upon the first proposition we say that the attempted exemption is void—that it affords the complainant no protection against the payment of its share of taxes.

The validity of this exemption clause can only be maintained upon either first, the contracting power of the State, or, secondly, upon the power of selection of the objects of taxation belonging to the legislative department.

Can the validity of the exemption clause in complainant's charter be maintained upon the contracting power of the State?

There is no doubt that in a great many States of the Union the power of the Legislature to make such contracts has been recognized. Under their contracting power it has been held that the Legislature can part with their taxing power over a corporation, either temporarily or permanently. The charter of the corporation is a contract, and as such inviolable.

Perhaps the abuse or the unwise and improper use of this power has led to the imposition of constitutional limitations upon the Legislature in this respect. This power of *contracting away* the liability of individuals or corporations to taxation for a definite or indefinite period was frequently the subject of gross abuse. In many of the later Constitutions the Legislature is expressly prohibited from making such contracts. Any contract or grant made by the Legislature in opposition to such prohibitions are utterly void. The grantee cannot claim, under its charter, more than the Legislature has the power to give. If the Constitution of the State prohibited the Legislature from making a contract parting with its taxing power to this or other corporations or individuals, then any attempted parting by the Legislature of its taxing power, whether for a consideration or not, whether for

value received or as a gift, must fall still-born. Our position is that our Constitution prohibits the Legislature from making any contract by which it parts with its taxing power; that it prohibits the Legislature from making a contract with an individual or corporation to exempt him or it from taxation for a definite period of time.

We deem it entirely useless to go into an examination of the constitutions and decisions from other States, as our own constitution on this point has been exhaustively examined by this court and construed in the case of

Miss. Mills v. Cook, 56 Miss., p. 40.

And complainant's charter was granted to and accepted by it long *after* this decision. We quote the language of Judges Campbell and Simrall as bearing upon this point.

Judge Campbell says that "the legislative act, whether it be a charter or other form of law, which says that it shall be exempt and not subject to taxation, is in conflict with the constitution" and confers no rights. "The import and purpose of section 13 seem to * * * forbid the exemption of such property from the liability to be taxed."

Judge Simrall says:

"The Legislature cannot take from the corporation its liability to taxation."

"If the exemption is granted *in the form* of a *contract that is prohibited.*"

"There is no limitation on the power of the Legislature to incorporate railroad * * * other like corporations and the grant of all the franchises usual and necessary * * * except that the Legislature cannot grant them immunity from taxation. The *Legislature is prohibited by the constitu-*

tion from making that contract with corporations."

The power of the Legislature to make a *contract* of exemption does not exist. The exemption clause as a contract is a nullity and confers no right, immunity or privilege on the complainant and no one is bound by it.

Tested by the case above quoted, the validity of the exemption clause cannot be maintained upon the State's power of contracting. No repeal of the exemption clause is necessary, because it is void as beyond legislative power to grant, and to say that a repeal is necessary to subject such property to taxation would be to say that such a contract is binding until repealed; to say that the Legislature did have power to *contract away* its taxing power temporarily.

Can the exemption be maintained upon the second theory that the Legislature has the right to select the objects of taxation and that it follows that it can select the objects of exemption?

We readily concede, for the sake of this argument, that the Legislature has the selection of the objects of taxation. That the constitutional provisions do not require all property to be taxed, and we draw no distinctions between corporations and individuals. We take it that the constitution places the property of individuals and corporations upon the same footing; that the rules which apply to one apply with the same force to the other.

It will be borne in mind that the general revenue laws of this State, for a long period, and during the years 1886, 1887 and 1888, subjected the property of railroad corporations to taxation. The Legislature had selected this class of property for taxation. (See Code 1880, sections 468 and 597, et seq. and the various Revenue laws). The property of complainant belongs to a class

that *has been selected for taxation.* Unless there is a *valid exemption* it would certainly have to pay its share of the taxes under the general revenue law. We have, then, selected by the Legislature for the purposes of taxation a class of property which embraces the property of the complainant. But complainant claims that although railroad property has been selected for taxable purposes, its property of the same kind is freed from its share of the burdens of taxation by virtue of the exemption clause in its charter. But we have seen that such exemption can not be maintained upon the power of the State to contract away its taxing power, and we think that it is equally clear, from all the authorities, that the legislation can not, under this admitted power of selection of objects of taxation, exempt *any one* of a class selected for such purpose. That the constitutional provisions of equality and uniformity require that when a class has been selected for taxation all belonging to that class must be taxed alike. Such we conceive to be the doctrine of the Mississippi Mills case. Whilst it is true that the selection of objects of taxation belongs to the Legislature, and that it can pretermit any class and thereby create an exemption, or by an act of the Legislature exempt a class, yet it is also true that it cannot, under this power, exempt a particular one of a certain class which has been selected for taxation. The taxation must be equal and uniform, and this principle is not violated by the exemption of a class of property, but it is violated when a class has been selected for taxation and a certain one of that class is sought to be withdrawn from the class by legislative exemption. In such cases the exemption is void.

Burroughs, in his work on Taxation, Sec. 53, says: "The tenor of the decisions is that the rule of equality

and uniformity applies to such objects of taxation as may be selected by the Legislature as proper to bear the burden; and so long as these objects are affected alike the fact that other species of property are not included, does not violate the rule. But where one species of property is exempt while others of the same kind are taxed, the *exemption is invalid for want of uniformity.*" Also see Cooley Con. Lim. Secs. 514 and 515, and notes.

The constitution of California, Sec. 13, Art. 11, is identical with our Sec. 20, Art. 12, in exact words and punctuation, and was construed by the Supreme Court of that State, at October term, 1867, in People vs. McCreery, 34 Cal., page 432. Chief Justice Campbell in the Mississippi Mills case reviewed this case and approved it on the "uniformity and equality" part of the decision, but did not hold with the learned California court that "all property" made it imperative on the Legislature to tax all property.

Now, as we have before said, the Legislature had selected railroad property as a subject of taxation, exempting a general class—those in process of construction. (See Code 1880, Sec. 597 et seq.) As a road was built and operated it came within a class selected for taxation under the general law, and it was incompetent for the Legislature to grant to one road in advance the right when it was built and being operated of escaping the tax which was by law imposed on all other roads in operation. It could not single this road out as a favorite. It might possibly exempt for the time a class of railroads, but it must be done by a *general* rule of which all roads of the same class might avail themselves. The general effect of the revenue law was to subject all railroad companies owning and operating a railroad (Sec. 597), and all parts of road finished and

used for profit (Sec. 608, latter part), so that under the law, as parts of a whole road were completed and opened up for traffic they became liable for taxation. There was the general rule adopted. The effect of the exemption clause, if valid and allowed to stand, overrides, in complainant's behalf, this general rule estabtablished. It takes this particular road out of a general rule established for other roads. The taxation upon this class of roads selected for taxation is not equal and uniform. It is a clear discrimination in favor of this Company's property as against the other railroad companies of the State.

We may, perhaps, better illustrate our position. Say that the Legislature has selected horses as an object of taxation. Certainly they could not say that the horses of A shall be taxed because he is rich, and that of B exempt because he is poor; nor could they say that because in one section of the State horses are scarce, and that it would tend to the development of that part of the State to introduce more horses there, and that, therefore, they would exempt all horses carried there for a given period of time, that species of property having been selected for taxation. Such an act would plainly violate the rule of equality and uniformity. They may well say that colts under a certain age (a general class) shall be exempt; but they cannot say that the colts under a certain age of A B shall be exempt. The rule requiring equality and uniformity in taxation is a limitation upon the Legislative right of selection of the objects of taxation. While the right of selection of the objects of taxation, carrying with it the right of selection of the objects of exemption remain, that right is so limited by the rule requiring equality and uniformity that it has no power to make discrimination in favor of any person or corporation.

It can select a class as exempt of which all who own that class can avail themselves. They might exempt all railroad property from taxation, but having required all roads built and in operation to pay taxes, they cannot make any distinction in favor of some particular road—cannot create an exception to the general rule.

(We respectfully ask the Supreme Court of United States to pass on the foregoing point. If our constitution is not thus construed we desire to seek to have it amended. HOOKER & WILSON, Attorneys.)

The next question raised by the demurrer is, whether the exemption commences to run from the approval of the charter, or from the completion of the road to the Mississippi river. Complainant, by its bill, says that the exemption is twenty-five years from the date of approval, the period subject to be diminished by an early completion to the Mississippi; the longer they keep from the Mississippi river, the longer their period of exemption from taxation. An indefinite and uncertain period. They strain the language of their charter to lengthen their exemption period.

It is the first rule of construction to examine the words of the act or the contract under consideration, and to interpret them in their ordinary grammatical sense. Such interpretation is to be placed on them as consists with their ordinary meaning. There is no need to resort to the other rules of construction if the language of the act or contract, taken in their usual and ordinary acceptation, leads to one certain and definite conclusion. It is not permitted by straining the language of the act, to force another meaning from the ordinary meaning of the language used, and then say that the act or contract under consideration is ambiguous.

The language of the act is the first object of criticism, and is as follows: * * * "it is hereby declared that said company, its stock, its railroad * * shall be exempt from taxation for a term of twenty years from the completion of said road to the Mississippi river, but not to extend beyond twenty-five years from the date of the approval of this act."

Now the grammatical meaning of the language has the effect of giving to the railroad an exemption period, a *definite* period of twenty years. The period is definite and limited in duration to twenty years. It runs for twenty years *from* the completion to the Mississippi river. It then fixes a period of years, and in so many words fixes the commencement of that period, *not from* the *approval* of the act, as contended by the road, but *from* the *completion* of the road to the Mississippi river. "Shall be exempt for a period of twenty years from the completion to the Mississippi river." Shall be exempt for (during) a period (term) of twenty years from (after) the completion of the road to the Mississippi river.

Certainly this part of the language of the charter (and which is the language of the grant of the exemption) conveys the idea of a definite period of exemption, commencing from the completion of the road to the Mississippi river, and not from the approval of the charter of the company. Such is the obvious and ordinary meaning of the words or language, and it is only by straining the words or warping them from their position in the sentence that a different meaning can be given. There is nothing to justify a present immunity, or a longer period of years immunity, than twenty years. This idea of a fixed and definite term of exemption for twenty years is borne out by reference to the various railroad charters

granted by the Legislature at the same session. It seems to have impressed itself on the Legislative mind that a term of twenty years exemption from taxation should be granted to the different roads that were then applying for charters. That was the length of the exemption period selected; and when it was to commence from the approval of the Act it was generally so specified in the charter. The same period of exemption or term of years, i. e., twenty years, was granted to complainant, but instead of fixing the commencement at the date of approval of the charter, "from the approval of the charter," it was fixed "from the completion to the Mississippi river." Now, if we are correct that the Legislature intended to grant the same term of years of exemption from taxation to this road that it had granted to the other roads, "twenty years," then we are clearly right in our interpretation; but by complainant's theory they are entitled to twenty-five years exemption, subject, however, to be lessened by completing their road within five years to the Mississippi river.

We call the attention of the court to the construction of the clauses of that part of Section 8 of complainant's charter relating to the exemption from taxation. Complainant has made a violent onslaught on the sentence, reversed the positions of the clauses, changed the major or principal clause into a qualifying one, and boldly converts the limiting or qualifying sentence into the principal. Under their theory the charter should read thus: "Shall be exempt for a period of twenty-five years from date of approval of charter, but shall not extend beyond twenty years from the completion of the road to the Mississippi." This would be exactly reversing components of the sentence, putting forward the limitation on the grant as the grant

itself, and placing the grant in the back ground as a limitation or qualification. Under the words of the charter the grant of immunity from taxation is for a period of twenty years from completion of road to Mississippi river; the limitation is that this period shall not extend beyond twenty-five years from the approval of the charter. "Shall be exempt for a period of twenty years from completion to Mississippi river, *but not* to extend beyond twenty-five years from approval," etc. The latter part of the sentence was but a limitation upon or qualification of the preceding part. It certainly was not intended to give, nor does it purport to *give* or *grant anything*. As before said, the latter clause is, as it purports to be, a limitation of a grant contained in the *previous* clause. It limits the exemption period, *theretofore* granted, "twenty years from the completion of the road to the Mississippi river," not to extend beyond twenty-five years from approval of the Act. You can make nothing out of the latter clause but a limitation or qualification of the first; that the twenty years exemption previously granted shall not extend beyond twenty-five years from date of approval.

What authority can be found, what necessity exists for inverting the clauses of the sentence and impressing upon them different qualities from what they possess as they stand? Under our interpretation they have their twenty years of exemption as the other roads that were chartered at the same session of the Legislature, but no more. The company might delay the enjoyment of its exemption, or abridge the period of its exemption by refusing or delaying the completion, just as the ordinary road having its exemption period of twenty years commencing from approval of charter, might abridge that period by failure or delay in build-

ing. We don't think that the Legislature intended to give this road any longer exemption period than it did the other roads of the State.

The complainants claim that not only have they twenty five years of exemption from taxation, but that the Legislature gives them a bonus of five years taxation *not* to reach the Mississippi river. If their theory be true, it was to their interest not to complete their road to the Mississippi river within twenty-five years; a strong inducement was held out by the Legislature, which had this enterprise so much at heart, to *delay* the *completion* of the road. Such is undoubtedly the result of complainant's argument that a delay of five years in completing thier line to the Mississippi river would add to their exemption period that much, or, rather, that an early completion to the Mississippi river would abridge that period. Our theory is that the road was only to have a fixed and definite term of exemption from taxation, and that, to accomplish the proposed object of the incorporation, and to hasten the building of this public work, the enjoyment of this exemption privilege was postponed to the completion of the road to the Mississippi, and it was provided that this exemption period should not extend beyond twenty-five years from date of approval of charter.

If the legislative intention was to delay the completion of this work, to offer a premium for negligence on the company's part in constructing this road, then complainant's theory is correct; but we must say that it used strange language to express such intention.

Now, if it had been the legislative intent to grant twenty-five years exemption from approval of charter it would have been very easy to have said so. The natural and ordinary way would have been to say that their

property should be exempt from taxation for twenty-five years from date of approval of charter as it did in the other charters. It would be unnatural for them to express such an intention in the manner of this company's charter.

We must assume that all the words in the sentence were used for some purpose, and to express something. Why were the words "from the completion to the Mississippi river" used if not to represent the beginning of the exemption period? There is no grant *in presenti* of immunity from taxation; the whole matter is in the future—its construction, its exemption for a term of twenty years. This term is then made to commence from its completion, and not from date of approval, and, then, to insure its early completion follows the limit upon the grant.

If the Legislature intended to grant an exemption period of twenty-five years to complainant from the date of approval of the charter, then the strange anomaly is presented of the Legislature saying to this corporation, "if you go right along and build this road, this road which promises so much for the State, complete it, you shall have only twenty years, but if you will delay for five years the completion of it, we will give you twenty-five years exemption on *all* your incomplete roads and branches."

We cannot assume that the Legislature contemplated any such idea of giving said company a bonus not to complete the road; that, although they wanted that section of the State developed, and were willing to assist this company for that purpose by a remission of their taxes for twenty years, yet they would give them twenty-five years remission to delay the completion of the railroad.

We say, then, that our interpretation not only satis-

fies, but is the natural, ordinary and grammatical meaning of the words used.

That it consists with the professed object and purpose of the Legislature by giving this road the same period of exemption from taxation, to-wit: twenty years, that were given to the other roads as a rule at that session of the Legislature, and that its effect is to hasten the completion of this road by postponing the commencement of this period to the completion of the road.

That it does not strain the different clauses of the sentence from their position or impress upon them, different qualities from what they have as located.

On the other hand, the interpretation by complainants presents a forced, unnatural construction by an inversion and change of the clauses, and tends to delay the completion of this road. A prime object of the Legislature was an early building of the road to the Mississippi river, for we see granted at that session of the Legislature four or five railroad charters, whose exemption period is made to commence on the completion to the Mississippi. (Acts 1882.)

It is claimed that the completion of the road to the Mississippi river was not a condition precedent to the enjoyment of the Legislative bounty, because complainant says that from the routes that could be selected, the various lines that could be constructed, the different termini provided for at the option of the complainant, a road might be built and operated which would never reach the Mississippi river. That the charter did not require or necessitate the building of a road to the Mississippi. We think that an examination of the charter shows that the dominant idea of the Legislature was the connection by railway of the Mississippi river with the eastern or central part of the State.

The idea is that a main line shall be built "into, along and across that part of the State of Mississippi lying between the Mississippi river and the Chicago, St. Louis & New Orleans Railroad." The two bases are the Mississippi river and the Chicago, St. Louis & New Orleans Railroad. The idea conveyed that they shall build a road, or road with "one or more tracks," across that part of the State lying between the above bases. Then it provides that "one of said lines" that crosses said territory shall reach the Mississippi river at or near a point opposite Arkansas City if practicable. Not if financially practicable, not if practicable because of the solvency or ability of the company to build, but if the point selected is a practicable point to build to. The words "if practicable" do not refer to the financial ability of the company to build that line of road, but to the practicability of the route or point selected for reaching the Mississippi river. But it is really immaterial to what it refers, as this is but "one of the said lines" between the Mississippi river and the Chicago, St. Louis & New Orleans Railroad.

Then it provides that "one of said lines" or a branch shall be extended or pass through Yazoo City.

It then provides that railroads and branches may be built from the Mississippi river through the Deer Creek, Sunflower and Yazoo bottoms and extending north and south, and "to construct and operate such spurs and laterals from or along such *main* line or branches * * * as may from time to time be necessary or proper to *fully develop said country lying west of the C., St. L. and N. O. R. R. and east of the Mississippi river.* It was evidently the intention that a road should be built from the C., St. L. and N. O. R. R. to the Mississippi river, so as to connect these two great arteries of commerce and open up and de-

velop the territory lying between them. The building of a short branch does meet the purposes and requirements of the charter. To emphasize this meaning of the Legislature it makes the completion of the road to the Mississippi river a *sine qua non* to the enjoyment of legislative favor. And of the four several roads that were chartered leading from the eastern part of the State to the Mississippi river it was provided that the exemption period should be from their completion to the Mississippi river.

There was not a lobbyist for the scheme but who dinned into the ear of the legislator whom he had "button-holed" in the interest of the enterprise the immense advantage to the State by the connection of the Mississippi river with the railroads running through the State, and the development of that portion of the State. It was never intended to bottle up this enterprise by the construction of a short line of a railroad operating only as a feeder to the C., St. L. and N. O. R. R., now known as the Illinois Central, which was then well known to be backing the enterprise.

Nor do we see anything in the word "extend" which militates against our position. The statute simply provides that the exemption term shall not be extended beyond twenty-five years from approval of charter.

It is a proper word to use in speaking of the duration or continuance of a term. It simply means that twenty-five years lapse from the approval of the act shall put an end to their exemption term, whether the road has been completed to the Mississippi river or not.

The use of the word rather sustains our position, if anything, for according to complainants' theory their term could not be lengthened or extended (they claim-

ing twenty-five years from date of approval), but it could be *curtailed* by an early completion to the Mississippi river.

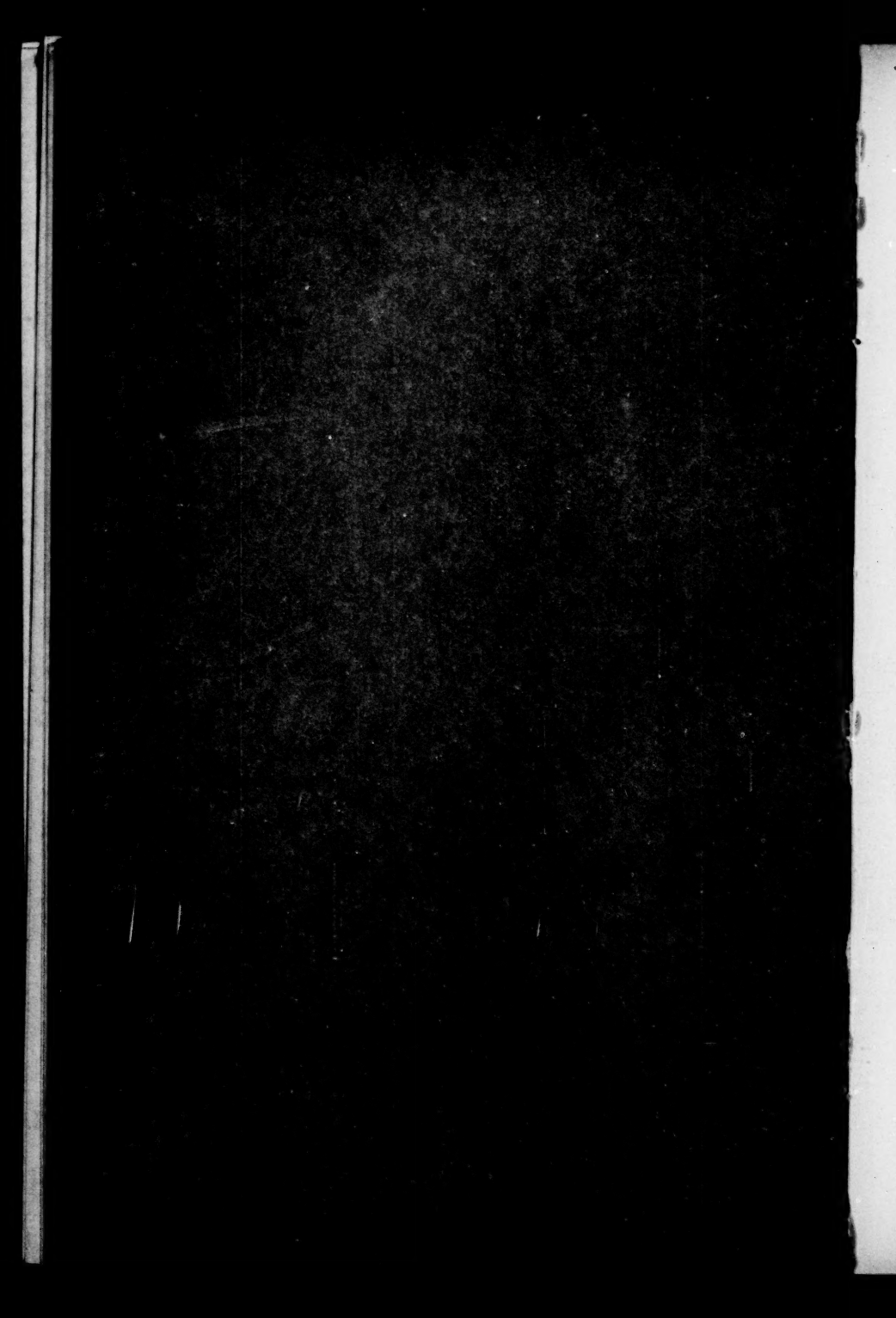
Nor do we find any salve for complainant in the latter part of the section, exempting this road from taxation by cities and towns.

To conclude our views, we call the attention of the court to the universally recognized principle that in all grants by the Legislature to a corporation, and more especially in grants of immunity from taxation, the grant is to be most strictly construed against the corporation.

"To raise a doubt is to resolve it against the corporation."

In 64 Miss., McCulloch v. Stone, the court say "that grants or privileges are to be strictly construed, and in cases of doubt are to be resolved in favor of the State. In other words, when the words of the grant are susceptible of two constructions, either of which is reasonable and fairly to be drawn, the courts must assume that the Legislature acted with reference to the known rule and intended only to grant those privileges or immunities implied in the more restricted sense." Under the operation of this well settled rule of construction it was held by the Supreme Court of Louisiand that in a charter similar to plaintiff's, providing for an exemption from taxation for a period of ten years from or after its completion, that the road was not exempt until it had been completed, (see R. R. v. Dennis, p. 34, La.) which decision was affirmed by the Supreme Court of the United States.

Marcellus Green ~~HOOKER & WILSON~~,
Attorneys for Appellee Wyatt.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1086.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

VERSUS

SAMUEL B. THOMAS ET AL., SHERIFF AND TAX COLLECTOR.

ON MOTION TO DISMISS WRIT OF ERROR.

STATEMENT.

By an act of the Mississippi Legislature, approved April 3, 1888, it was provided in section 1 that "every railroad which has failed to pay the taxes for which the same was liable, for any year for which it was so liable, such railroad not being exempt by law or by its charter from taxation for such years and so being liable to taxation, shall be assessed for, and shall pay an *ad valorem* tax, to be assessed as hereinafter provided, unless such railroad shall within sixty days

after the passage of this act pay the taxes for which the same was liable according to its charter."

Then follow provisions for the assessment of railroads liable to taxation, but which have escaped, and for the collection of the taxes. Acts of 1888, p. 47. Record, p. 6.

Under this act the property of plaintiff in error was assessed for taxation for the several years following the completion and opening for traffic of parts of its line of railway through several counties. R. 7.

By section 597 of the Code of 1880 (in force ever since) it was provided that "each railroad company owning and operating a railway in this State, shall, on or before the third Monday in August in each year, file with the Auditor of Public Accounts a complete schedule of all its property, * * * * * setting forth therein the length in miles or fractions thereof its entire roadbed, switches and side-tracks and showing how many miles thereof * * * lie in the State and in each county." * * * * Sections 599, 600, 601, 602, provide a plan for the assessment of all railroads.

Section 603: "When the valuation of the property and railroad of any railroad company shall be ascertained * * * * * it shall be the duty of the Auditor to ascertain the taxes due the State from each, and notify the company of the same by letter or otherwise, and he shall certify to the clerk of the chancery court of each county in which a railroad lies the amount to be taxed in said county for county purposes," etc.

Section 604 provides for the distraint of railroad property delinquent for State taxes upon the warrant of the Auditor.

Section 605 declares that "the collector of taxes for

any county shall collect the amount due the county, as is now provided by law in the case of delinquents."

Sections 607 and 608 provide for a commutation by allowing the payment of so much per mile as a privilege tax in lieu of the *ad valorem* taxes, the last section of the chapter (608) concluding as follows: "Provided, that no railroad company shall be subject to taxation under this chapter while the same is in process of construction, but if any part of any road shall be finished and used for profit the part so finished shall be taxed, although the whole road may not be finished."

The injunction sued out by the plaintiff in error to restrain the collection of these delinquent taxes was dissolved. R. 16. The Supreme Court of Mississippi affirmed the decree, placing its judgment on the ground that under its charter the Yazoo and Mississippi Valley Railroad Company was not exempted from taxation until its road should reach the Mississippi river. R. 23, 24.

Section 8 of the charter, which it is claimed gave an exemption from the date of the act of incorporation is as follows:

"Be it further enacted, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances and all its property in this State necessary or incident to the full exercise of the powers herein granted, not to include compresses and oil mills, shall be exempt from taxation for a term of twenty years from the comple-

take away any immunity. The real question was, therefore, did those laws apply to this company? did its charter, subsequently granted, repeal those laws in so far as they applied to its finished railroad? There was no question presented of a *subsequent statute* conflicting with the charter, but it was left absolutely open for the authorities in the first instance and the court in the last to construe the former laws.

"In order to come within the provision of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the State. The prohibition is aimed at the legislative power of the State and not at the decisions of its courts, or at the acts of administrative or executive boards or officers."

See case last cited.

A law which merely provides a remedy for the ascertainment and collection of debts properly due can in no sense be said to impair the obligation of a contract. And that is precisely the character of the act of 1888, which, it is said, by counsel, was "in fact intended to deny the claim of the PLAINTIFF to exemption under its charter." It may be remarked that there is nothing in the act itself or in the record to warrant such assumption on their part.

It may be conceded for argument's sake that section 8 of the act of incorporation did grant an exemption to the plaintiff in error without regard to the completion of its railroad to the Mississippi river, but that does not give this court the power to review the judgment of the State Court.

In Knox v. Exchange Bank, 12 Wall, 379, the court said: "We are not authorized to review the judgments

of the State courts, because their judgments refuse to give effect to valid contracts, or because those judgments in their effect impair the obligation of contracts. If we did every case decided in a State court could be brought here where the party setting up a contract alleged that the court had taken a different view of its obligation to that which he held."

Wherefore it is submitted the writ of error herein should be dismissed.

T. M. MILLER,
For Defendants in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO., PLAINTIFF IN ERROR,

v.

S. R. THOMAS, ET AL., DEFENDANTS IN ERROR.

BRIEF OF A. S. CLEMENTS AND MARSHALL SMITH FOR THE PLAINTIFF IN ERROR.

IN THE SUPREME COURT OF THE UNITED STATES.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO., PLAINTIFF IN ERROR.

v.

S. B. THOMAS, ET AL., DEFENDANTS IN ERROR.

BRIEF OF S. S. CALHOON AND MARCELLUS GREEN, FOR DEFENDANTS IN ERROR.

POINTS:

I.

This Court has no jurisdiction of this appeal:

1. Because the law subsequent to appellant's charter, which is claimed to impair its obligation, expressly excepts from its operation all railroad companies whose charters exempt them from taxation; hence, there is no *subsequent law* impairing the obligation of the contract.

2. Because the Supreme Court of Mississippi did not, in its decision, give effect to any law *subsequent* to appellant's charter, but only construed the terms of the charter.

3. Because the judicial interpretation of the Constitution of Mississippi, Section 13, Art. 12, in force when appellant's charter was granted and accepted, was, that exemptions from taxation in charters were subject to legislative control.

II.

The Appellant is not exempted from taxation by the terms of its charter until the completion of the road to the Mississippi river—a condition precedent unperformed.

III.

The Legislature, under Section 20, Art. 12, Constitution

of Mississippi, as judicially interpreted, and in force when the charter was granted, had no power to exempt any particular railroad from taxation, even if it had power to exempt all of a class.

ARGUMENT.

1. Point—*Jurisdiction.*

No jurisdiction exists in this Court under the 25th section of the Judiciary Act, to review the decision of a State Court unless there is a law, *subsequent to the contract*, alleged to be impaired, and the State court has given effect to the subsequent law.

Epitomizing the doctrine this Court in N. O. Water Works v. *La. Sugar Co., 125 U. S., 33-4*, say:

"When the State Court decides against a right claimed under a contract, and there was no law subsequent to the contract, this court clearly has no jurisdiction. But when the State Court gives no effect to the subsequent law, but decides, on grounds independent of that law, that the right claimed was not conferred by the contract, the case stands just as if the subsequent law had not been passed, and this Court has no jurisdiction. Again, "This Court cannot entertain jurisdiction of a case from a State Court because the *judgment* of that Court impairs or fails to give effect to a contract"

Knox vs. Exchange Bank, 12 Wal. 379.

Applying these doctrines to the case at bar we find that in 1888, subsequent to the date of Appellant's charter, the Act complained of was passed, but *ex vi termini it excludes from its operation all railroads which are exempt, or not liable to taxation.* See Sections 1 and 2.

There is, then, no *subsequent law* which in any manner purports to affect the obligation of its contract for exemption if it exists.

Whether, upon a construction of a charter, the exemption is found by the State Court to exist, or not, is a question of the construction of the terms of a contract independent of any *subsequent law*, and not reviewable by this Court.

The opinion of the Supreme Court of Mississippi merely

construes the terms of the contract without reference to any subsequent law.

Jurisdiction was upheld in *Vicksburg R. R. Co., v. Dennis, 116 U. S, 667* on appeal from the Supreme Court of Louisiana; but, in that case, *effect was given by the Louisiana Court to the subsequent law*, and hence the distinction between that case and the one at bar.

Under Section 13, Art. 12, Constitution of Mississippi, in force, when the charter was granted, the Supreme Court of Mississippi had decided prior to the grant in *Mississippi Mills v. Cook 56 Miss., 40.* that an exemption in a charter was subject to legislative control. This construction became part of the contract.

Chicago v. Sheldon, 9 Wal. 50;
Olcott v. Supervisors, 16 Wal. 690;
Burgess v. Seligman, 107, U. S. 33-4.

Hence, by accepting a charter containing an exemption, under a Constitution subjecting it to legislative control, the Appellant is precluded from objecting that such contract is impaired by a subsequent law imposing taxes, and as the case cannot be made to fall under the provisions of the 25th Section of the Judiciary Act, this Court is without jurisdiction.

II POINT.

Complainant is not exempted from taxation by the terms of its charter until after its road shall reach the Mississippi river.

It is laid down as the first maxim of construction that "It is not permitted to interpret what has no need of interpretation."

Potter's Dwarris, pp. 125, 126 and 141;
U. S. v. Fisher, 2 Cranch, 358;
Sedg. on St. and Const. Law, 51.

The preamble and the other sections of the Act, do not conflict with the plain terms of the section, specifying that the exemption should be "for twenty years from the completion of said railroad to the Mississippi river" as we hope to show further on. On the contrary, we hope to show that they fully harmonize with it.

But suppose they do conflict with it by argumentative construction, it cannot effect it.

It is learning too familiar to require authority, that conflicting causes must yield, even in a deed, to the grant set forth in the granting clause. It is to the *grant* we must look, and everything inconsistent with that is nugatory, and can neither enlarge nor restrict its scope where it is plain in its terms. And so of statutes.

"The preamble cannot enlarge a statute. It may be referred to in doubtful cases; but where the terms of the enacting clause are clear and positive, the preamble cannot be resorted to. Though it may assist in construing ambiguous expressions, it cannot control clear ones."

Potter's Dwarris, pp 107, 108 and notes.

9 Peters 301; 3 McCool, 298;

Sedg. St. and Const. Law, 51; 3 Wharton, 610.

The true construction of the charter under consideration, under the above rules is what its words in the grant plainly say, that the exemption should be "*from the completion of the railroad to the Mississippi river*, but not to extend beyond twenty-five years from the date of the approval of this act." The idea was to induce early completion to the river so as to then enjoy the exemption.

It is hardly necessary to discuss the proposition that statutes should not be construed to work exemptions from taxation by implication; but it must be done plainly and beyond a reasonable doubt. The right to raise revenue by taxation is so vital to organized society, that an intent to abandon it, in any case, must appear in language too plain to be mistaken.

"A relinquishment of the right of taxation is not to be presumed unless expressed in terms too plain to be mistaken."

Jefferson v Skelly, 1 Blatch, 436;

Gilman v Sheboygen, 2 Blatch, 510;

Philadelphia v Maryland, 10 How. 376.

"If, on any fair construction of the legislation, there is a reasonable doubt whether the contract (of exemption) is made out, this doubt must be resolved in favor of the State. There must be no room for controversy."

Bailey v Maguire, 22 Wallace 215;
22 Wallace 528; 21 Wallace, 498;
18 Wallace, 206; 120 U. S. 569;
Cooley on Taxation, 204 and note 205 and note 70.

In a charter the language of exemption was, that the property of the railroad "shall be exempted from taxation for ten years after the completion of the road," and it was held not exempt before completion.

V. S. & P., R. R. Co. v Dennis, 116 *U. S.* 667;
Baton Rouge, etc., R. R. Co. v Kirkland, 33 *La. Ann.* 622;
Vicksburg v Dennis, 34 *La Ann.* 954

At the same session of the Legislature which passed complainant's charter, there was enacted the charter of the *Canton, Aberdeen, etc., R. R. Co.*, in which the same *Section 8* is a copy of the *eighth section* of complainant's charter, *verbatim et literatim*, except that it uses the words "shall be exempted from taxation for a term of twenty years, *from the date of approval of this act*," thus conclusively showing that the Legislature knew how to express itself, and showing what it means when it uses the word *from*.

Acts 1882, *p* 1009, *Sec.* 8.

We refer also to other charters at the same session:

Acts of 1882, *p* 861 *Sec.* 18;
Acts of 1882, *p* 895, *Sec.* 25;
Acts of 1882, *p* 942, *Sec.* 13;
Acts of 1882, *p* 988, *Sec.* 26.

All of which four charters give exemption from "the passage of the acts."

Now, at the same session was passed still another charter, that to incorporate the *Memphis, New Orleans Railroad and Levee Company*, in which, with similar prefaratory language as in the *eighth section* of complainant's charter, there will be found the following quite significant language: "shall be exempt from taxation during the construction of, etc." *Acts* 1882, *p* 883, *Sec.* 8. So, it seems that when the Legislature desired to exempt before completion, it knew how to say so.

Recurring to the general principles before referred to, we

need simply raise a doubt that the legislative intent was to exempt only from the date of reaching the Mississippi river. Complainants must exclude all doubt of this. They must show there "is no room for controversy."

Now, in the light of these principles let us examine the charter.

From its whole scope it is plain that the main object was to reach the Mississippi river. *Section 2* shows this in stipulating, after providing power to build branches and spurs nearly everywhere in the Delta, that "one of said lines or branches to reach the Mississippi river, etc." And *Section 8* shows it by limiting the exemption "from the completion of said railroad to the Mississippi river."

It was thought of great importance to reach that river, and as soon as possible, so as to have a railroad interested in keeping up the levees, as well as in developing the country. We had been expending immense sums on these levees, and had been memoralizing Congress for help, and holding great meetings about them.

The scheme was, in the present charter, to expedite this end by granting complainants very large powers, and exempting all the millions of property it might own in its main lines, spurs and branches, for twenty years from the time it touched the river with any of them, and it hoped to induce it to reach the river within five years at most by providing that, while it exempted for twenty years *after* reaching the river, still, the whole period should not extend beyond twenty-five years *from the approval of the act.*

If such was not the intent, why refer to the Mississipi river at all? Why not simply exempt for twenty-five years from the approval of the act, if, as in *Section 13* complainant should construct twenty miles within three years from the passage of the act? No answer, consistent with reason, can be made to these questions.

If complainants had selected some twenty miles, and had built that, to avoid forfeiture by *Section 13*, and found it the best paying railroad in the world, could it ever be contended that this was exempt for twenty-five years from the approval of the act?

Suppose, with no design ever to reach the river, complainants had built hundreds of miles of railroads, could it be contended that all this should be exempt for twenty-five years from the approval of the act?

It seems to us that these questions are conclusive as to the true construction of the act.

This charter gives enormous and very unusual powers.

Section 1 empowers the ownership of any quantity of land or personalty to sell, lease, or rent.

Section 2 empowers to build any number of railroads, in any part of the Delta, in any direction.

Section 6 empowers the company to fix its own rate of charges, not to exceed a very liberal maximum indicated.

Section 7 empowers to enter on State lands anywhere, and take free, in fee simple, one hundred feet on each side of the centre of any of its tracks as right of way, and to use, free, any rock, timber, earth, sand, gravel, water, or other materials, anywhere found on State lands along their routes, and to build bridges across any stream, whether navigable or not, with right of wharves, steamboats, etc.

Section 9 empowers to insure persons, or property, transported, and to construct compresses and oil mills.

Section 8 exempts the whole property necessary to the full exercise of the powers granted, except compresses and oil mills, from taxation for a term of twenty years *from the completion of said railroad to the Mississippi river*. But not to extend beyond twenty-five years from the date of the approval of this act."

So, it seems, fairly considered, that all these large privileges were really designed to insure the early completion of the road to the river and, with this key, we readily unlock the meaning of the whole statute.

Upon no other construction can we harmonize all the parts of *Section 8*. Just after the word "act" in the last quotation, *Section 8 proceeds*:

"And, when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may

be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the State Treasury, to be dealt with as the Legislature may direct; but said company shall be *exempt from taxation by cities and towns.*"

Upon the construction insisted on by complainants, it is not to be escaped that it was designed to exempt from taxation by cities and towns *forever.* The courts will be slow to construe this into a perpetual exemption from tax by municipalities.

Our construction avoids this by referring the municipal exemption to the *time intervening before completion to the river*, and for the twenty years thereafter. If the other was the meaning it surely would have been explicitly stated to be in perpetuity. If it meant that the cities and towns, and the State, could not commence to tax until twenty years *after* completion to the river, it was superfluous, if the first clause gave such exemption as against the State, for the reason that this would have *included* cities and towns without express mention, as was decided in *Southern R R. Co. v. Mayor, etc., of Jackson, 38 Miss. 334.* Complainant's argument leads to the conclusisn that, if they never reached the river, still they were exempt for twenty-five years.

The claim that appellees discard all of *Section 8*, except the words of the granting clause is a mistake. On the contrary, they urge the view that the key to unlock the meaning of the whole act is to be found:

A. In the express terms of the grant of exemption for, viz.: "Twenty years from the completion of said railroad to the Mississippi river" in *Section 8* of the charter;

B. In the manifest object of the Legislature to reach that river, as shown in *Section 2* of the charter in these words, "one of said lines, or a branch thereof, to reach the Mississippi river at, or near, a point opposite Arkansas City, if practicable, so as to connect such point on the east bank," etc., etc.

C. That this language in the two sections shows the purpose to have the road reach the Mississippi river, and,

therefore, to commence the exemption from that time, in order to expedite touching that river, by a powerful incentive.

It will not do to refer the words "if practicable," in *section 2*, to the "Mississippi River." Clearly they refer to a point at which the river is to be touched, if practicable. But the river must be somewhere reached, as is plain from both sections, the point opposite Arkansas City being preferable to the Legislature. If the opposite view is unsound, based as it is on augumentation as against plain language, the whole argument for the railroad company falls to the ground.

To the argument that the charter provided a scheme of taxation peculiar to that road, it is sufficient to say that, if this be true the scheme is to commence to be in force, by express terms, *after* the termination of the exemption, and not before it began, and the right to tax before cannot be regarded as waived by silence as to the mode of assessment and levy. It would fall into the general plan before the exemption began.

III POINT.

The Legislature cannot exempt any particular railroad from taxation, even if it had the power to exempt all of its class.

In support of this proposition we cite, *Mississippi Mills v. Cook*, *56 Miss*, *40*, and the brief of counsel for Appellee, and the authorities it cites.

Section 20, *Art. 12*, *Constitution of Mississippi*, requires that "taxation shall be equal and uniform throughout the State." Under this, we say, to use an illustration suggested by the decision, that, while the Legislature, in order to encourage the raising of stock in the State, might exempt all brood mares, it could not exempt the brood mares of John Smith. It might exempt *all railroads*, but not a *single one*, and, in exempting all, it could not contract so as to control succeeding legislatures.

Respectfully submitted,

MARCELLUS GREEN
S. S. CALHOON,
For Defendants in Error.

1086.

UNITED STATES OF AMERICA.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY

v.

SAMUEL B. THOMAS, ET AL., SHERIFFS AND TAX COLLECTORS, ETC.

On Writ of Error to the Judgment of the Supreme Court of the State of Mississippi.

Brief for Defendants in Error.

BY T. M. MILLER.

IN THE

SUPREME COURT OF THE UNITED STATES.

TO OCTOBER TERM, 1889.

No. 1086.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY

VERSUS

Samuel B. Thomas, Sheriff and Tax Collector of Hinds county; G R. Kemp, Sheriff and Tax Collector of Madison county; D. C. Love, Sheriff and Tax Collector of Yazoo county; T. J. Wyatt, Sheriff and Tax Collector of Holmes county; L. T. Baskett, Sheriff and Tax Collector of Leflore county, and G. B Jones, Sheriff and Tax Collector of Grenada county.

In error to the Supreme Court of the State of Mississippi.

STATEMENT OF CASE FOR DEFENDANTS IN ERROR.

The Yazoo and Mississippi Valley Railroad Company was incorporated by an act of the Mississippi Legislature, approved February 18, 1882, with the right and power to construct, own and operate a rail-

road or railroads into, along and across that part of the State of Mississippi lying between the Mississippi river and the Chicago, St. Louis and New Orleans Railroad, on such line or lines as shall be deemed best by the board of directors, one of the lines or a branch thereof to reach the Mississippi river at or near a point opposite Arkansas City, if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans (now the Illinois Central) Railroad, one of said lines or a branch thereof to pass through Yazoo City, Mississippi; and with power to build one or more branches or lines between the Mississippi river and Deer Creek and between Deer Creek and the Sunflower river, and between the Sunflower river and Yazoo river to or toward the north line or the south boundary line of the State; also with authority to construct and operate such spurs or laterals from or along such line or branches, not exceeding 100 miles in length, as should from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans Railroad and east of the Mississippi river.

Record, pages 2 and 3.

It is admitted in the bill of complaint that before the commencement of the suit 140 miles of this company's railroad had been finished for traffic, and it is not claimed that it had been completed to the Mississippi river. Record, 2.

Provision is made by the Revised Code of Mississippi (1880) for the taxation of all railroad property in the State, with a proviso to the last section on that subject, as follows: "Provided, that no railroad company shall be subject to taxation under this chapter while the same is in process of construction, but if

any part of any road shall be finished and used for profit, the part so finished shall be taxed, although the whole road may not be finished."

Revised Code of Mississippi, 1880, Ch. 10, Secs. 597 to 608 inclusive.

The complainant company having failed to pay taxes for several years, was assessed under the act of 1888 as stated in the bill of complaint (R., 5 and 6), but obtained an injunction against the several tax collectors who are made defendants, claiming that by virtue of section 8 of its charter it was exempt from taxation under the general law.

Upon the hearing of a demurrer to the bill the chancellor held that the company was subject to taxation, dissolved the injunction and entered a decree for the taxes with damages. On appeal this decree was affirmed by the Supreme Court of Mississippi. R., 23 and 24.

The section of the railroad charter which it is claimed created the exemption is as follows: "Be it further enacted, that, in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances and all its property in this State necessary or incident to all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, not to extend beyond twenty-five years from the date of this act; and when the period of exemption herein prescribed shall have expired the

property of said railway may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or for State, shall be collected by the treasurer of this State and paid into the treasury, to be dealt with as the Legislature may direct, but said company shall be exempt from taxation by cities and towns." R., 3.

The following points are stated on behalf of the defendants in error:

1.

This court is without jurisdiction, there being involved no law impairing the obligation of a contract.

2.

Under the general revenue laws of the State, so far as the same applied to railroads, the property of this company sought to be taxed, was taxable; and no exemption as to State and county taxes could arise under its charter until and except upon completion of its railroad to the Mississippi river.

ARGUMENT.

On the first point no attempt will be made to enlarge upon the views submitted on the motion to dismiss.

On the second point:

By the general law of the State, in force when the charter of this company was granted, provision was made for the assessment and taxation of each railroad in the State, as well such as were then in existence as those which should thereafter be finished and used for profit, as to the parts so finished.

The result of these provisions was to subject to tax

ation the property of this company *at once* upon any part of its line finished for traffic.

It is therefore a mistake to suppose, no matter what introductory declarations were made in the act of incorporation touching the *certainty* of its taxation, that special or additional legislation was needed to subject this property in advance of any *term* of exemption provided for. "Taxation is the rule, exemption the exception. The exception must be shown. Silence is negative and doubt is fatal to the claim." By reference to the general statutes and this section 8 only could any degree of certainty be arrived at.

Now it is submitted that if this section had ended with the words "completion to the Mississippi river," then there could be no shadow of question but that under the general revenue laws cited the property would be liable to taxation until the arrival of the period indicated. So the question is what effect shall be given to the further language, "but not to extend beyond twenty-five years from the date of the approval of this act?" Shall it be said that this language was intended to alter the period when the exemption should begin? To convert a fixed *term* beginning with completion to the river into an uncertain period beginning with the approval of the act? There is nothing to indicate such a purpose, and it is maintained that no authority in statutory construction would warrant such a view.

On the contrary, it is well settled that repeals by implication are not favored, and it is equally well settled that legislation which relieves any species of property from its due proportion of the burdens of government must be so clear that there can be neither reasonable doubt nor controversy in regard to its meaning.

See opinion pp. 23 and 24, citing Cooley on Taxation ; 2d Ed., 204.

Bailey vs. McGuire, 22 Wall, 215.

Vicksburg etc., R. R. v. Dennis, 116 U. S., 665.

See also Vicksburg etc., R. R. v. Dennis, 34 La. Ann., 954.

It is clear that the only purpose of this qualification ("but not to extend beyond twenty-five years from the date of the approval of this act") was to hasten the building of this road, according to the charter powers, "into, along and *across*" the country lying between the Mississippi river and the great north and south line of railway ; for *otherwise, no matter when completed*, the twenty years of immunity would arise ; whereas by this qualification the work must be done in five years to get the twenty years term of exemption on the *whole* line Every day of delay after five years would shorten the exemption so much, but there was no *term* in advance of completion.

The residue of the section can produce no difficulty ; it was unnecessary and added nothing to the general law. It followed, without any declaration, that when the period of exemption should expire the company would be subject to taxation at the same rate that others are taxed. Taxation here must be left to the general law, which may be said to supplement particular acts, just as the common law enters into statutes

It seems to have been the purpose of the Legislature in granting this charter to provide for an extensive scheme of development in that part of the State, which, at the time, was in a great degree inaccessible, save by means of small, and frequently unnavigable, streams. The idea was to give two outlets : One to the Mississippi river and one to the great central north and south line of railway. Else why the language,

"*into, along and across* that part of the State lying between the Mississippi river and the Chicago, St. Louis and New Orleans Railroad." * * * * *
"One of the lines or a branch thereof to reach the Mississippi river at or near a point opposite Arkansas City, if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans (now the Illinois Central) Railroad?"

Now if exemption from taxation could be considered as an inducement of any weight with the corporators to engage in this beneficent scheme, taking the position of counsel, we find that a premium would be absolutely held out for the non completion of the road to the river; for an exemption of twenty years is given from completion to the river, whereas twenty-five years are granted provided the river is not reached at all.

It might be asked if the Legislature had intended that this company should be exempted from the operation of the general tax laws in the interim between the completion for traffic of any part of its line and completion to the river, why it did not say so? Nothing could have been easier to do.

If the purpose had been, as claimed by opposing counsel, then the simplest and most natural language to accomplish it would have been: "Shall be exempt from all taxation for a term of twenty-five years from the approval of this act, provided it shall not extend beyond twenty years from the completion of the road to the Mississippi river." What is it that is not to extend beyond twenty-five years from the approval of the act? Manifestly the "term" of exemption beginning as fixed.

It must be that the projectors of this road, as well as the Legislature, were familiar with the exemption

already accorded to all railroads in process of construction and *thought* that would protect the company until it reached the river. Only in that way can we understand the peculiarity of this eighth section. But there is no warrant for the idea of an exemption (other than that general exemption while in such process) independent of completion to the river. Completion to the river is made the point of time for the commencement of a TERM—which word imports a fixed period, having a certain beginning and termination.

The claim of counsel that an absolute exemption of twenty-five years was intended, beginning, too, at a time different from that provided in the act, rests upon the assumption that the building of the road (across) *to the river* was of mere secondary importance; that it might or might not be done, according to the notions of practicability or expediency entertained by the board of directors; that the purpose was to induce a development of the Delta region (called by them swamp country), and therefore to exempt the capital invested: that to make the inducement apply to the secondary object alone would have no effect to advance the main purpose. These considerations, it is argued, coupled with the fact that by way of preface to the clause granting exemption the Legislature announced its purpose to make certain what burdens the State would and would not impose, warrants a transposition of the language used to suit the view favorable to an unconditional and the longest term of exemption.

But whatever may have been the view of the incorporators, there is no warrant for the assumption that the Legislature regarded the building of the road across the country, so as to connect the river with an existing railway, as a matter of secondary importance or that it would have granted the exemption upon any

other terms. On the contrary, if language can have a meaning, nothing is plainer than that the primary object was to secure that connection; that is the first object mentioned—other lines of road appear to have been incidentally in view only.

So far as the prefatory announcement of *certainty* is concerned: In the first place that is achieved by reading the act in connection with other laws on the subject of taxation, and secondly, no preamble has ever been permitted to override the matter of an enacting clause.

Again, the corporators could never claim to have been deceived, because the true and just view of legislation of this character is that it is the language of the proposed beneficiaries. The fact being, as often stated by courts, that these charters are prepared by the persons interested and presented to the Legislature for its assent only.

So while it may be true that the incorporators supposed they had drafted a charter which assumed to regulate the entire subject of taxation in respect to that corporation, and therefore exclusive, as a matter of fact, the whole subject was not disposed of. In the best view, it was with the railroad company whether it ever would have an exemption unless important language of definite meaning be eliminated.

Now the rule announced in the case of Gibbons v. Brittenum, cited and relied on by counsel (56 Miss., 232) is this: "It is well settled in construction that a subsequent statute, although not repugnant in all its provisions to a prior one, if *clearly intended* [italics by writer] to prescribe the only rule that shall govern in the case provided for by it, repeals the original statute." In the absence of such *clear intention* the original statute continues in force and, as before stated,

where the rights of the public are involved all reasonable doubts are solved against the adverse claim.

Courts are not at liberty to say that one statute repeals another if it is possible to reconcile them. Ib., 241.

Lastly, it is submitted there is no substantial difference between the case at bar and that of Dennis v. Vicksburg, S. and P. R. R. Co., 34 La. Ann., 954, and V., S. and P. R. R. Co. v. Dennis, 116 U. S., 665, unless it be that here it is made more certain that the term of exemption should begin *in futuro*. The argument in respect to the legislative policy as furnishing a meaning different from the import of the language used may be said to have spent its full force in those cases, and without effect.

T. M. MILLER,
Of Counsel for Defendants in Error.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1087.

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, APPELLANT,

vs.

THE BOARD OF LEVEE COMMISSIONERS OF THE YAZOO MISSISSIPPI DELTA; D. C. LOVE, SHERIFF AND TAX-COLLECTOR OF YAZOO COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED FEBRUARY, 2, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, MAY 23, 1889.

1 & 2 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Pleas & proceedings had and done in the circuit court of the United States for the southern district of Mississippi, at a term thereof begun and held in the court-room, in the city of Jackson, on the first Monday, being the 5th day, of November, A. D. 1888, before the Honorable Robert A. Hill, district judge, present & presiding.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY
vs.
BOARD OF LEVEE COMMISSIONERS, D. C. LOVE, *et als.*
516. In Equity.

Be it remembered that heretofore, to wit, on July 14th, 1888, the complainants, by attorneys, filed in the office of the clerk of said United States circuit court their bill of complaint against defendants, and the same, with the proceedings and judgments of said court thereon, are in the words & figures following, to wit:

3 UNITED STATES OF AMERICA,
Southern District of Mississippi:

To the judges of the circuit court of the United States for the district afor-said:

The Yazoo and Mississippi Valley Railroad Company, a corporation created by the laws of the State of Mississippi and domiciled in the district afor-said, brings this bill against D. C. Love, sheriff and tax-collector of Yazoo county; T. J. Wyatt, sheriff and tax-collector of Holmes county; L. T. Baskett, sheriff and tax-collector of Le Flore county, citizens of said district, and The Board of Levee Commissioners for the Yazoo-Mississippi Delta, a corporation of said State and domiciled therein, defendants; and thereupon your orator complains and says that it was incorporated by an act of the Legislature of the State of Mississippi entitled "An act incorporating the Yazoo and Mississippi Valley Railroad Company
4 and declaring its powers," approved February 17th, 1882; that orator accepted the charter and organized under its provisions, to be hereinafter mentioned, and proceeded with the work of constructing railroad and branches beginning at the city of Jackson, in said State, with the initial point on the Chicago, St. Louis and New Orleans railroad, a railroad running centrally through the State to New Orleans, State of Louisiana, and northwardly to a point opposite Cairo, Illinois, and proceeding through parts of the counties of Hinds, Madison, and Yazoo to Yazoo City, and thence through Yazoo county, by the east bank of the Yazoo river, and through Yazoo valley into Holmes county, and connecting, by way of Lexington, Holmes county, with said Chicago, St. Louis and New Or-

leans railroad at Durant, and by a branch from said line to Greenwood, in Le Flore county; that its road from Jackson to
5 Yazoo City was completed for traffic on the 1st of May, 1884, and the remainder of its line, so far as finished, was open for traffic by September 1st, 1886, the whole mileage being 140 miles, including branches.

2. Orator further states and shows that it has the usual fixed property in each of counties named, with a rolling stock common to all its line and branches and used indiscriminately for the whole line.

4. Orator, further complaining, shows that the enterprise so chartered was deemed costly and hazzardous in a financial view, both by the Legislature and the promoters. The light in which it was regarded will be best comprehended by reading the preamble and the second and eighth sections of the act, and these parts of the act are here inserted as parts of this bill.

6 *Preamble.*

"Whereas the construction of railroads to, in, through, and along the Mississippi river basin and the Yazoo and Sunflower river basins, penetrating these and other alluvial lands in this State, west of the Chicago, St. Louis and New Orleans railroad, and connecting them by railroad and branches with other railroads west, east, north, and south, is deemed and hereby declared to be a work of great public importance and in strict accordance with the true policy and interest of this State, — should be encouraged by legislation and liberality; and

"Whereas the physical difficulties of constructing and maintaining railroads to, across, along, or within either the Mississippi, Sunflower, Deer creek, or Yazoo bottoms or basins or the other alluvial lands herein referred to are such that no private company has so far been able to establish a railroad and branches develop-
7 ing said basins and alluvial lands and connecting them with the railroad system of the country:

"Now, therefore, in order to induce the investment of capital in the construction and operation of such a railroad and branches, and thus develop the resources and wealth of this State, &c.—

"SEC. 2. Be it further enacted, That the said corporation shall also have and it is hereby authorized and invested with the right and power to build and construct, and thereafter to use, operate, own, and enjoy, a railroad or railroads with one or more tracks into, along, and across that part of the State of Mississippi lying between the Mississippi river and the Chicago, St. Louis and New Orleans railroad, on such line or lines as shall be deemed best by the board of directors of the company hereby chartered, one of said lines or a branch thereof to reach the Mississippi river at or near a
8 point opposite Arkansas City, if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans railroad, one of said lines or railroad or a branch therefrom to be extended to or pass through Yazoo City, Mississippi; and said

company shall have the right and power and are hereby authorized to build one or more branches or lines of railroad between the Mississippi river and Deer creek, and between Deer creek and the Sunflower river, and between the Sunflower and the Yazoo river-, in the direction of or to the north line of this State, and extend the same or any one thereof in the direction of or to the south boundary line of the State, as shall from time to time, in the judgment of said company, be deemed proper; and shall also be authorized to construct and operate such spurs or laterals from or along such main line or branches, not exceeding 100 miles in length, as may from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans railroad and east of the Mississippi river, in this State; and the said company, as soon as and whenever from time to time they have located said line or lines of railroad or branches, spurs or laterals thereto, or any of them, shall file in the office of the secretary of state a statement showing the general line thereof, so far as the same has been up to that time located."

Eighth sec.

"Be it further enacted, That, in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain and to make certain in advance of such investment and as an inducement and consideration therefore the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to extend beyond 25 years from the date of the approval of this act; and when the period of exemption herein prescribed shall have expired the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by treasurer of this State and paid into the treasury to be dealt with as the Legislature may direct, but said company shall be exempt from taxation by cities and towns."

5. Orator further states that, viewing the enterprise in the light thus afforded, it is apparent that financial success and the extent of the railroad system projected would depend on the development of an unsettled swamp region to follow railroad construction, and as the experiment was untried it was not possible to define in advance the number of lines and branches, their direction and termini, as all this was dependent on indications and tendencies to be developed as the enterprise progressed. Large powers were given and an ample range of selection to admit of a system on a large scale, and also of a system of limited extent, as circumstances and financial practicability might determine; that it was hoped that

there would grow up gradually, under the powers confer-ed, a system of roads to meet the growing wants of that country; hence orator states there was no requirement of completion to any point, if we except Yazoo City or between points, within any stated time, nor any absolute requirement, if we except the Chicago, St. Louis & New Orleans railroad, of a point — beginning and ending. One line was to reach Yazoo City and a line or branch the Mississippi river, "if practicable," and this me-nt financially practicable.

6. And orator, further complaining, charges that it was not intended as a condition precedent to the enjoyment of any privi-
13 leges or exemptions granted that the completion of a line or branch to the Mississippi river should be accomplished, for it is apparent, as orator insists, from the preamble and second section that much railroad construction would be achieved before reaching the river, and, compatible with the general scheme projected, there might and probably would be constructed a system of roads, with desirable connections and of large and beneficial proportions, before connection with the river could be made or found practicable, and might exist and continue to be of great public utility, although the system might not be connected with the river at all, as the event has proved.

7. Orator further states that it was [has] not been possible to predict, at the date of its charter, whether the system of roads, after connecting with the great line of the interior, would ever be carried to the Mississippi river.

14 And orator states further that it has not found it practicable so far to extend any line or branch to the river and cannot now affirm that such connection is practica-l- financially, or that it will be. It has not been practicable up to this time and it may not be within its resources to make the connection at all.

8. Orator further states and charges that it has not doubted its claim to exemption from taxation by virtue of the 8th section for a period beginning with the date of the approval of the act of the -corporation. Such claim has never been denied until the present year, 1888, by the revenue officers of the State, by whom it is now asserted that the exemption from taxation will not begin until its road or a branch thereof shall be completed to the Mississippi river.

9. Orator insists and charges, on belief and advice, that its
15 exemption began at the date of its charter, and will continue for 25 years from that date.

10. Orator states and charges, on belief and advice, that it was the intention of the Legislature by said 8th section to grant a period of exemption which should begin at the date of the approval of the act of incorporation absolutely.

Its duration was to be contingent. It was not to extend beyond 25 years "from that date and 20 years from the date of completion of a line or branch to the Mississippi river." It was to be terminated by the lapse of 20 years "from" such completion or the lapse of 25 years from the date of the charter, whichever should first happen. There was to be an extreme outer limit "beyond" which the "period" would not "extend," but short of which it might be

made to end, to wit, by the lapse of 20 years "from" the date of the completion of a line or branch to the Mississippi river, should
16 that be found practicable.

11. Orator is convinced and so insists that it was not the purpose of the Legislature to make the promised aid to the enterprise dependent on an event which might not occur at all, not essential to the scheme, and the time of its possible occurrence uncertain, for it is obvious (as orator believes it will appear to the court), on considering the said preamble and second section, that there would be much costly and beneficial railroad constructed under the charter connecting the swamp country with systems of railroad in operation, to wit, the Chicago, St. Louis and New Orleans railroad and its connections, as the result has shown, the chief purpose being the developement of the region of country marked out by the charter by bringing it into connection with systems of railroad already in operation, whether any connection with the Mississippi river should be
17 found practicable or not; and orator states that so much of its lines and branches as are now constructed fulfill the expectations of the Legislature and conform to the provisions of its charter.

Orator states, in further elucidation of the language of said eighth section, that the Legislature, intending the period of exemption to last 20 years from completion of the road to the Mississippi river, and to begin at the date of the charter, and, so interpreting the words "from the completion of said road to the Mississippi river," added the extreme limit of 25 years lest it might happen that the exemption would become indefinite in time, or perpetual by a failure to extend a line or branch to the river for any cause, and assuming that the practicability of such extension would be determined in the course of five years by the progress made and the indications developed.

18 And orator, further complaining, says that the concluding part of said section 8, which prescribes a mode of taxation when the property of orator shall become taxable, to wit, after the period of exemption shall have expired, limits the taxing power, the mode of collecting the tax, and cuts off *of* taxation by cities and towns, indicating thereby that the exemption period covered the time from the date of the act, for it appears unreasonable that the Legislature intended unlimited taxation during the period of greater outlay and a less burdensome taxation after income began.

And orator says the fact is that it accepted its charter and entered upon the doubtful enterprise on the faith of an exemption from taxation beginning at the date of the charter, and has acted on this belief, declining to pay taxes, and that this belief was shared
19 by the revenue officers of the State and their legal advisers for the past four or five years.

Orator further says that in the year 1884 the Legislature of the State of Mississippi passed an act entitled "An act to incorporate the board of levee commissioners for the Yazoo and Mississippi delta," approved February 28th, 1884, by which the defendant, Levee Commissioners, was created a corporation, with succession,

power to sue and be sued, make contracts. For the purposes of its creation, the act created a levee district composed of counties and parts of counties subject to overflow from the Mississippi river, which district embraces, as now constituted, as hereinafter mentioned, part of Yazoo county, part of Holmes county, and part of Le Flore county indicated by a boundary, and orator's road and branches penetrate the levee district in the counties just named; and the said board
20 of commissioners is charged by the act with the duty of building, rebuilding, repairing, and keeping up a levee or levees on the east bank of the Mississippi river; that, to enable the said board of commissioners to fulfill its duties, it was enacted by section 9 of said act as follows:

"SEC. 9. Be it further enacted, For the purpose of building, rebuilding, and repairing, constructing, and maintaining said levees, and to enable them to carry out the purposes and provisions of this act, the said board of levee commis-ioners for the Yazoo-Mississippi delta shall have power to issue the bonds of said board for an amount of money not exceeding five hundred thousand dollars, such bonds to be in such denominations, not less than one hundred dollars each, as the said board may prescribe, which bonds
21 shall each be signed by the president and countersigned by the secretary of said board, and be made payable to the person or persons to whom sold or to bearer, or bearer simply, in the discretion of said board, in not less than 20 years after the first day of March, 1884, at any place within or without the limits of this State, and shall bear a rate of interest not exceeding eight per centum per annum, for which coupons may be attached, payable at such time and place as the board may contract."

The said bonds are by said section declared negotiable in any market in or out of the State, and to be sold at not less than their par value; the proceeds of the sales of the bonds so sold to be a levee fund for the purposes of the act.

Orator further says that under this section the said board
22 of levee commissioners issued bonds for five hundred thousand dollars at 8 per cent. interest, and sold the same in market, adhering to the terms of the law, and these bonds are now outstanding, the interest thereon only having been paid as it accrued. Orator further says that by the 13th section of said act it was provided:

SEC. 13. Be it further enacted, That for the purpose of paying the bonds and coupons issued, negotiated, or sold by said board, as herein provided, and any other indebtedness or liability legally contracted by said board, an ad valorem tax of 13 mills on the dollar upon the assessed value of all property, real and personal, in the front counties of Tunica and Coahoma and that part of De Soto included in said levee district, and a similar tax of nine mills on the dollar upon the assessed value of all property, real and personal, lying and situated in the remaining or back counties and parts of counties embraced in said levee district, or so much thereof as may be necessary,
23 is hereby levied and assessed for each and every year until all of said bonds and interest and other indebtedness is fully

paid. The assessment for said ad valorem tax shall be the regular assessment made by the assessors of the several counties in said levee district, from time to time, for the collection of the State tax as the same shall appear upon the assessment-rolls of said counties, and all property in said levee district subject to State tax shall likewise be subject to said ad valorem levee tax, and the said levee tax shall be a lien upon the property of the tax-payer from the same time and to the same extent and in the same manner as State taxes, and the same shall be collected by the regular tax-collector of the several counties in said levee district, at the same time and in the same manner and under the same laws that they may collect the State tax, just as if said ad valorem tax of thirteen mills and nine mills was a part of the State tax for the several years in which the same
24 is collected, and in case of default in the payment of said levee tax like proceedings shall be taken by the collectors as in case of the default in payment of State and county taxes. The collection of said ad valorem levee tax shall commence at the next regular tax-paying time after the passage of this act. Tax-collectors shall not receive from any tax-payer in said levee district the State and county tax unless he also pays at the same time, in current money, said ad valorem tax of thirteen mills or nine mills, according to location.

By the 14th sec. of said act of Feb. 28th, 1884, it was enacted as follows:

"SEC. 14. Be it further enacted, That for the purpose of this act the property of all railroad companies and other corporations of every kind, both real and personal, lying, situated as and being within the limits of said levee district, shall be taxed just as the prop-
25 erty of individuals is herein taxed, according to its location, any exemption from taxation, donation of taxes, or other such provision contained in the charter of such railroad company or other corporation or in any law heretofore passed by the Legislature to the contrary notwithstanding; and said ad valorem tax of 13 mills or 9 mills on the dollar, according to location, is hereby levied and assessed on all the property of such railroad companies or other corporation; and any tax-collectors of the counties wherein the same may be situated shall collect said tax and pay the same over to the treasurer of the levee board; and said railroad companies or other corporations shall pay the said ad volorem tax in the same funds that individuals are required to pay the same.

Said railroad companies or other corporations shall, on or before the 1st day of June, 1884, through their authorized agents,
26 give into the assessors of the counties in which their property is situated a list of all their property in such county and value the same under oath, as individuals are required by law to do, and the assessors of the several counties shall list the same on the assessment-roll, real estate on the land roll and personal property on the personal roll; and the board of supervisors of the several counties shall pass upon such assessments, both real and personal, at the time they pass upon the personal assessment-roll of their county for the year 1884, and after the year 1884 the assessment of

all property in said levee district belonging to said railroad companies or other corporations shall be made at the same time and in the same manner and be governed by the same laws in force for the assessment of property belonging to individuals for collecting the State and county taxes.

27 The board of supervisors of the several counties in said levee district shall have the same power, at the same time and in like manner, to raise, reduce, change, alter, or correct the assessment of the property of such corporations that may be given them by law over the assessment of property of individuals.

All lands belonging to said railroad companies be [or] other corporations which may in any year be delinquent for non-payment of said ad valorem levee tax shall be advertised and sold by the proper tax-collector at the same time and in the same manner that he sells delinquent lands of individual tax-payers; and if at such sale no person bids the amount of taxes, damages, and costs due thereon, he shall strike the same of- to the State, and the redemption or purchase of said lands, whether sold to the State or individuals, shall be governed by the law applicable to lands

28 of individuals sold for non-payment of State and county taxes. Whenever any railroad company shall fail to pay said ad valorem levee tax on its right of way, road-bed, depots, or other buildings or fixtures connected with its road-bed, the tax-collector of the county shall levee upon and sell the same for the taxes due, upon publication of a notice of the time and place of said sale for 30 days in some newspaper published in said county; and if there be no newspaper published in said county, then the notice hereinbefore required to be given shall be made by posting written notices in three public places in said county, one of which shall be on the door of the court-house therein and therefor. The time for the payment of the said levee tax by said railroad companies or other corporations shall be the time fixed by law for the payment of

29 State and county taxes by individuals, and said companies or corporations shall be subject to the payment of the same costs, fees, interest, and damages for the non-payment of said levee tax as individuals. The deed of tax-collectors of lands belonging to such railroad companies or other corporations sold for non-payment of said levee tax shall have the same effect and be governed by the same laws that govern deeds of tax-collectors conveying lands of individuals sold for the non-payment of State and county taxes, and the same rule shall apply to the deeds of the State conveying such lands to purchasers after the time for the redemption has expired. If there should be no assessor in any county to receive and make the assessment of such railroad companies or other corporations for the year 1884, as herein required, then the clerk of

30 the board of supervisors of such county shall receive and make such assessments and do all things required herein of the assessor; and if any railroad company or corporations should in any year neglect, refuse, or fail to give in and value their property as herein required, then the board of supervisors of the county

wherein the same may be situated shall assess the same and list it on the assessment-rolls for the collection of the levee tax."

Your complainant would further state that on the 16th day of March, 1886, the Legislature of this State passed an act entitled "An act to amend an act entitled 'An act to incorporate the board of levee commissioners for the Yazoo-Mississippi delta, and for other purposes,' approved Feb. 28th, 1884." By the provisions of this said amendment and for the purpose of completing the line of levee began by said board, and of repairing, constructing, and main-
31 taining the same, and to enable said board fully to carry out the ends and purposes of its incorporation, said board of levee commissioners were authorized from time to time regularly to issue and sell the bonds of said board, as directed by law, for an amount of money not to exceed four hundred thousand dollars, in such sums and denominations, not less than fifty dollars, as said board might direct, bearing interest not exceeding six per cent. per annum, payable semi-annually, payable to the person or persons to whom sold or bearer in not less than thirty years from the date thereof; and for the payment of said bonds and coupons issued, negotiated, and sold by said board, is [as] hereinbefore provided, and any other indebtedness or liability legally contracted by said board, an additional ad valorem tax of seven mills on the dollar upon the assessed value of all property, real and personal, in the front counties of Coahoma, Tunica, and that part of De Soto included in the
32 levee district, and a similar tax of six mills on the dollar upon the assessed value of all property, real and personal, lying or situated in the remaining or back counties and parts of counties in said levee district, or so much thereof as may be necessary, was by said amendment assessed and levied for each and every year until all of said bonds and interest and other indebtedness should be fully paid and discharged; and it was further provided that sections 13 and 14 of said act of Feb. 28th, 1884, should be amended by striking out the words thirteen and nine, whenever they occur in said sections 13 and 14, and inserting in lieu thereof the words "seventeen and a half" and "twelve and a half," and said sections as so amended were expressly re-enacted and made applicable to the assessment, levy, collection, enforcing, and accounting for the additional ad valorem tax which was by said amendment levied and assessed, and said tax was then and thereby declared to be a
33 lien upon the property of the tax-payer in the same manner and to the same extent as the same original act related to and directed the collection, enforcement, and accounting for and — lieu of the original tax of 13 and 9 mills, as before provided, levied, and assessed by said sections 13 & 14; and it was expressly declared by said amendment to be the intention of said amendment to raise and increase said tax from 13 and 9 mills, respectively, to an ad valorem tax within said levee district of seventeen and one-half and twelve and one-half mills, according to location.

Your complainant would further state that by the 22nd section of said amendatory act the said board of levee commissioners were authorized to issue the bonds of said board, bearing interest at the

rate of six per cent. per annum, due in twenty years from the first day of May, to the amount of five hundred thousand dollars, to be used only for the purpose of exchange at par for the five
34 hundred thousand dollars of eight per cent. bonds already issued by said board, which should only be valid when such has actually been made. The bonds authorized to be issued by said sec. 22 were to have coupons of interest attached, and to be secured and called in and dealt with in the same manner as was provided for the other bonds authorized by said amendment.

Your complainant would further state, on information and belief, that the bonds of said board have been issued, sold, and negotiated as follows: For the first series, five hundred thousand dollars, and for the second series, four hundred thousand dollars, and for debentures of 1886, twenty-nine thousand dollars; the said bonds under the first series bearing interest of 8 per cent. per annum and payable in not less than twenty years from March 1st, 1884, and the said bonds under the second series bearing interest at the rate of six per cent. per annum, payable in not less than thirty years from the date thereof.

35 Complainant further states, on information and belief, that no part of the principal of said bonds have [has] been paid, but only the interest which has become due has been paid.

Further complaining, the orator says that by an act of the Legislature of the State of Mississippi passed Feb. 20th, 1888, the county of Holmes, or the part thereof as indicated by the boundary line of the levee district aforesaid, was added to said levee district, and the property embraced and situate in such part of the county of Holmes became taxable for levee purposes, as other parts of said district, from the date of this last act.

Orator states further that, relying upon the exemption contained in the said 8th section of its charter and regarding said levee tax as a "burden" imposed by the State upon the real and personal
36 property of said *said* district and having all the characteristics of a tax for public objects, — did not nor has not made any return to the assessors or boards of supervisors of the counties named of the value of its property, except detached lands which it does not claim to be exempted by its charter; but said board of levee commissioners has instructed the assessors and collectors of said counties to collect taxes on orator's property, contending that orator's charter exemption has not yet been acquired by the completion of a line or branch road to the Mississippi river, and, if otherwise entitled to exemption by said charter, that the terms thereof do not embrace exemption from local assessments for levee purposes; and, lastly, that the act incorporating said board of levee commissioners re-
37 peals so much of said 8th section of said charter as may embrace the levee tax aforesaid; but orator insists that, as before alleged, its exemption has been operative since the date of its charter and is still operative; that it does embrace exemption from the levee tax because a "burden" directly imposed by the Legislature of the State, and that the said eighth section is a contract between the State and orator inviolable by the Legislature and irrepealable, except by orator's consent.

Orator, further complaining, says that, notwithstanding the true intent and just operation of the said 8th section of its charter, it is asserted and claimed by those exercising the public authority of the State relating to the taxation of railroads that orator'- road and property is not exempt thereby; that said exemption, as provided
38 in said section, was not intended to begin until the completion of said road to the Mississippi river and not prior to that event; and on those views and claims proceedings have been set on foot on the assertion and claim that an act of the Legislature entitled "An act to provide for the assessment and collection of past-due and unpaid taxes on railroads which have escaped the payment of taxes," approved April 3rd, 1888, applies and was intended to apply to orator's road; said act provides as follows:

"SECTION 1. Be it enacted, That every railroad which has failed to pay the taxes for which the same was liable, for any year for which it was liable, such railroad not being exempt by law or its charter from taxation for such years, and so being liable to taxation, shall be assessed for and shall pay an ad valorem tax, to be assessed
39 as hereinafter provided unless such railroad shall, within sixty days after the passage of this act, pay the taxes for which the same was liable, according to its charter, or shall pay the privilege taxes for which the same was liable, as follows:

"If a standard or broad gauge road, for the years prior to the year 1884, eighty dollars per mile; for 1884 and 1885, one hundred dollars per mile, and for the years 1886 and 1887, one hundred and twenty-five dollars per mile;" and it is further provided in said 1st section that roads of a less standard or broad gauge — a less sum per mile.

Orator states that its road belongs to the class of standard or broad gauge, in the meaning of the act.

Orator further shows that by the second section of the act
40 aforesaid "the tax-collectors of the several counties through which any railroad runs, being a road not exempt from and not paying taxes, shall assess the same as additional assessments in their respective counties for the years in which they were taxable and in default, on lists to be prepared by the railroad commissioners, and it is made the duty of said commissioners to prepair such lists; and it is directed that the tax-collectors shall follow, as near as practicable, the general law as laid down in section 513 of the code of 1880, respecting lands left unassessed; and, further, that the lists so made out shall be forwarded to said railroad commission, in order to secure uniformity of taxation, by the first day of June next; and said commission shall, on the first Monday in July thereafter, proceed to correct and equalize the valuation therein,
41 and raise or reduce the same as they shall deem just and proper, and shall hear and determine all exceptions and objections to such assessment, which said acts and doings said railroads shall take notice;" and it is further provided that the State or the railroad may appeal, within ten days from any decission, questions affecting such assessment to the circuit court of Hinds county, and thence to the supreme court, the appellant railroad to give bond,

with sureties in double the amount of all taxes assessed; and, in case the assessment may be affirmed, judgment shall be rendered for the amount, with ten per cent. damages, against the principal and surities; and by section 3rd it is enacted that in the assessment and equalization the collectors and railroad commission shall be gov-
erned by the general law, in section 600 of the said code of
42 1880, so far as the same may be applicable; and by section 4 of said act it is provided that after such assessments, equalization, and correction said list shall be deemed to assess the true valuation, and shall be returned to the tax-collectors, who shall extend into seperate colum-s and shall calculate the county or levee taxes "from the State taxes of the respective years;" after which, and by section five of said act, it is provided that the tax-collectors shall proceed to collect the State, county, and levee taxes, if any, in the same manner as they would collect taxes on lands in like condition, and in case it becomes necessary to enforce collection by sales the same shall be made according to the general law in section 558 of the code of 1880; and all provisions as applicable to sales of
land shall apply; and personal property, if any such rail-
43 road may be seized and sold for such taxes, in like manner as the property of individuals may be seized and sold.

Orator states and charges that, applying this act to orator's road, the said collectors have followed its provisions and [in] treating orator's road as delinquent for the levee taxes of the said Yazoo-Mississippi delta levee district for the years 1885, 1886, and 1887 in the county of Yazoo, and for the years 1887 in the county of Le Flore, and for the years 18– in the county of Holmes; and the several tax-collectors of said counties have made out and heretofore forwarded the lists of assessment for said counties of Yazoo, Le Flore, and Holmes to said railroad commission to be corrected and equalized on valuation as respects both the fixed property in real estate and fixtures and the rolling stock of said railroad company, your orator.

44 And your orator states that, on the first Monday of July, 1888, said railroad commission proceeded under said act of April 3rd, 1888, to revise said assessment lists for said counties of Yazoo, Le Flore, and Holmes for the respective years for which your orator's road was treated as delinquent for said levee taxes in said counties, and equalized and adjusted the said lists, and caused the lists so revised, equalized, and adjusted to be sent to the several sheriffs and tax-collectors of said counties, appending to each list for each of said years a certificate, signed by the several members of said railroad commission, in the words following, to wit: We, the undersigned, railroad commissioners of the State of Mississippi, hereby certify that the foregoing is a true and correct assessment list of
that portion of the Yazoo and Mississippi Valley railroad
45 situate in the county of Yazoo, in said State, as revised by us under and by virtue of the laws of Mississippi; that the said certificate, with appropriate changes of the name of the county, is attached to the said revised lists for the counties of Le Flore and Holmes, and said list may be described without more particular mention as containing the number of miles of your orator's railroad

in the county, the valuation per mile, the number and value of stations, the number and value of sidings, the number of passenger cars and their value, the number and value of the freight cars, the number and value of hand cars and water tanks.

That on the valuation of so much of said road in Yazoo county lying within the levee district and now endeavored to be subjected to a levee tax a levee tax amounting to $7,016.19 is now claimed to be due; that for the county of Le Flore the valuation of your
46 orator's road per mile for the year 1887 is fixed at $18,730, and the total valuation of said road for the year 1887 was fixed at $35,960, and a total levee tax of $449,539 is now claimed to be due; that the valuation of so much of said road in Le Flore county lying within the levee district is, for the year 1887, fixed at $359,616.00.

That for the county of Holmes the valuation of your orator's road per mile for the year 1888 is fixed at $——, and the total valuation thereof is fixed at the sum of $—— for said year, and the valuation of so much of said road lying within the levee district in said county is fixed at the sum of $——, and a total levee tax of $—— is now claimed to be due. Your orator states that the assessments for the year 1888 is [are] not intended to be collected until the annual collection of State and county taxes shall take place, but for the
47 antecedent years the collections are to be made at once and without delay; that the sheriffs and tax-collectors of the counties of Yazoo and Le Flore have notified your orator that unless the said levee taxes claim- to be due for the years prior to 1888 are at once paid that the cars, locomotives, and other rolling stock and the real estate and any other property of your orator which for the time being can be found in the said counties will be seized and sold for the payment of said taxes.

And your orator, believing it is not liable for said tax, refuses to pay the same, and the said sheriffs now threaten to and are about seize and take said property for said taxes, and in Yazoo county have levied on the depots of orator, and will proceed to sell the same; and your orator states that although the taxes for the year 1888 are not now due and collectable, yet your orator, still
48 believing that it is not liable for said tax, will refuse to pay the same, and have [has] so notified the tax-collectors of said counties; and when the time arrives for the payment of said taxes for the year 1888 the tax-collectors, ordered and instigated by the said board of levee commissioners, affirm that they will seize and take into their possession the cars, locomotives, and other rolling stock and other property, real and personal, of said railroad company, so as to compel the payment of said tax and thus continue to vex and harass your orator from year to year. Your orator states that the value of said rolling stock is not sufficient to pay said levee tax as well as the State and county tax also claimed against your orator, and unless restrained the stations, tracks, and right of way
49 of your orator will be seized and sold for the payment of said tax.

Orator, further complaining, shows that the exemption from taxa-

tion granted by the said section 8 of its charter is a contract and protected from violation by art. 1, section 10, of the Constitution of the United States, which protection orator claims, and that the said act incorporating said levee commissioners, in so far as it repeals or impairs its obligation, is void, and that said act of 1888, if intended to apply to orator's road by the Legislature, is also void, and that the attempt to apply said act to orator's railroad by public authority is an infraction of the Consti-tion of the United States.

Orator, further complaining, states and charges that the effect of the acts incorporating said levee board and amending same is to impose a tax not for one year only, but an annual tax, to last until the whole bonded debt of said district and interest shall be fully
50 paid; that the right of the bondholders to the continuance of the tax for time necessary for such payment are [is] fixed and irrepealable, so that the act of the Legislature of the State of Mississippi is a standing grievance, to recur annually so long as orator's charter exemption shall last, and that complete relief from the grievance can only be secured by a judgment declaring said act of 1884 imposing the levee tax and repealing orator's exemption void, as also the attempt to apply the said act of 1888 to orator's road illegal for the whole period of the exemption, and that the sum in controversy, being the aggregate of all taxes now claimed to be due and to become due, amounts to more than fifty thousand dollars, although the sum now attempted to be collected amounts only to the sum of eleven thousand five hundred and eleven and thirty-nine one hundredths dollars ($11,511.39).

51 Orator further states and charges that it is a common carrier of passengers and freights, with connections with great through lines of travel and transportation; that its road is closely connected with the business of the entire country which it serves; that the seizure and sale of its rolling stock or of its fixed property will disconcert and derange its entire business and inflict upon orator an irreparable loss and at the same time produce great public inconvenience; that the levee board owns no property out of which damages may be made, and the said sheriffs, defendants, are not able pecuniarily to answer for the damages their proceedings may inflict; that orator is advised that the proceedings in each of the counties named depend for their validity on the same question, and that the only adequate relief against the wrongs threat-
52 ened is in the remedy to be obtained in a court of equity, wher- orator's writes [rights] may be settled in one suit and the proceedings to collect said tax suspended by injunction; that the said bondholders are too numerous to be brought in as defendants, but are properly represented by the said board of levee commissioners.

To the end, therefore, that the defendants hereto may severally full, true, perfect, and direct answer make to all and singular the matters herein contained, and, further, that until the final hearing of this cause or until the further order of this court, the said defendants may be enjoyned, prohibited and restrained from collecting or in any manner whatsoever attempting to collect any of the said levee taxes for past years of [or] for the year 1888 or any future

years on any of the property whatsoever of your orator, except its compresses, oil mills, and lands detached from its rail-
53 road; and on final hearing of this cause may the decree of this court be made and entered establishing and declaring the rights of your orator in pre-ises, and perpetually enjoining and prohibiting the said defendants from collecting or in any manner attempting to collect any of the said levee taxes now or hereafter to be assessed against the railroads, stations, sidings, rolling stock, hand cars, and water tanks of your orator or any of the property of your orator connected with its said railroad and necessary for its use, maintenance, and operation or incident to the full exercise of all the powers granted your orator by its charter, but not including, however, compresses and oil mills; and further enjoining and prohibiting said defendants and their successors in office from collecting or attempting to collect
54 any of said levee taxes which now or which for a period of twenty-five years from and after the 17th day of February, 1882, may stand assessed against the railroads, stations, sidings, rolling stock, hand cars, water tanks, or any other property of your orator, not including detached lands, compresses, and oil mills, necessary or incident to the full exercise of the powers granted it by its charter; and that your orator may have such other and further relief as in equity it ought to have—

May it please your honors that writs of injunction do forthwith issue, directed to the said D. C. Love, the sheriff and tax-collector of Yazoo county; L. T. Baskett, the sheriff and tax-collector of Le Flore county, and T. J. Wyatt, the sheriff of Holmes ——, enjoining,
prohibiting, and restraining them until further order of this
55 court from the collection of said levee taxes, as hereinbefore prayed; and also may your honors direct that subpœnas do issue, severally directed to the Board of Levee Commissioners for the Yazoo-Mississippi Delta; D. C. Love, the sheriff and tax-collector of Yazoo county; L. T. Baskett, the sheriff and tax-collector of Le Flore county, and T. J. Wyatt, the sheriff and tax-collector of Holmes county, commanding them severally, on a day certain and under a certain penalty therein named, to be and appear before this honorable court, and then and there to submit, stand to, and abide by such order and decree as — your honor- may seem fit and proper.

Your orator further states that it has not heretofore applied
56 for or obtained any injunction for the causes and matters set forth in this bill or for any causes or matters connected therewith.

(Signed) YAZOO & MISS. VALLEY R. R. CO.,
By JNO. G. MANN, *Sup't.*
GWINN & W. P. & J. B. HARRIS, *Solicitors.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Personally came before the undersigned, R. H. Winter, U. S. comm'r for So. dist. Miss., John G. Mann, who, being sworn, upon oath states

that he is the superintendant of the Yazoo and Mississippi — railroad and agent of the Yazoo and Mississippi — Company; that he has knowledge of the material facts set forth in the above bill of complaint, and that the same are substantially true, according to his knowledge, information, and belief.

[U. S. Comm'r Seal.]

(Signed) R. H. WINTER,
U. S. Comm'r, So. Dist. Miss.

57 To the clerk of said court:

You will issue a tempo-ary injunction or restraining order, without bond, enjoining and restraining the defendants, or any of them, from proceeding to collect the taxes, or any part of them, mentioned in the within bill until after the hearing of a motion for an injunction, to be heard before me at chambers, in the town of Oxford, on Thursday, the 26th day of the present month, and until the further order of said court, or of one of the judges thereof, sitting in chambers.

Ordered this July 13th, 1888.

R. A. HILL,
United States District Judge for Miss.

Filed July 14th, 1888.

JAMES M. McKEE, *Clerk*,
P'r R. H. WINTER, *D. C.*

Entered O. B., p. 299.

58 *Injunction Bond.*

Know all men by these presents that we, The Yazoo & Mississippi Valley Railroad Company, as principal, and W. Harris, James Fentress, Mississippi Valley Co., Illinois Central R. R. Co., as sureties, are held and firmly bound unto the Board of Levee Commissioners for the Yazoo-Mississippi — in the penal sum of twenty thousand five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, firmly by these presents.

Signed with our hands & sealed with — seals this the 16th d-y of July, A. D. 1888.

The condition of this obligation is that whereas the Hon'l- R. A. Hill, judge of the district court of the United States for the southern district of Mississippi, did, on the 12th day of July, 1888, make and enter an order temporarily restraining the sheriffs and tax-collectors of the several counties of Yazoo, Le Flore, and Holmes, pending the application for a regular injunction, from collecting certain levee taxes mentioned and set forth in the bill of complaint exhibited by the said Yazoo & Mississippi Valley Railroad Company in the circuit court of the United States for the southern district of Mississippi against The Board of Levee Commissioners for
59 the Yazoo-Mississippi Delta, and others, the sheriffs and tax-collectors of said counties, defendants:

Now, if the said Yazoo and Mississippi Valley Railroad Company shall prosecute its suit with effect and sustain its stay and injunction process, and, failing therein or in case of the final dissolution thereof, shall well and truly pay the taxes due and such costs and damages as may be awarded by law or the court for the wrongful suing out of said stay and injunction, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof the said Mississippi Valley Railroad Company, by its attorney of record, and the said sureties have signed and delivered these presents on the day and year first above written.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
By W. P. HARRIS, *Agent & Attorney of Record.*
W. P. HARRIS.
JAMES FENTRESS.
MISSISSIPPI VALLEY RAILROAD CO.,
By JAMES FENTRESS, *Gen'l Solicitor.*
ILLINOIS CENTRAL R. R. COMPANY,
By JAMES FENTRESS, *Gen'l Sol.*

60 I approve the foregoing bond with sureties. It is further ordered that the restraining order on preliminary injunction heretofore ordered remain in force until the next term of said court, unless the motion for a regular injunction shall be sooner heard by one of the judges of said court.

This July 18th, 1888.

R. A. HILL, *Judge.*

Filed July 19th, 1888.

JAS. M. McKEE, *Cl'k,*
P'r R. H. WINTER, *D. C.*

61 UNITED STATES OF AMERICA,
Southern District of Mississippi:

In Chancery.

To the Board of Levee Commissioners for the Yazoo & Mississippi Delta; D. C. Love, sheriff & tax-collecter for Yazoo county; T. J. Wyatt, sheriff & tax-collector for Holmes county, and L. T. Baskett, sheriff & tax-collector of Le Flore county, Greeting:

Whereas it hath been represented to us, in our said court of chancery, on the part of Yazoo — Mississippi Valley Railroad Company, complainant, that it has lately exhibited its bill against you, defendants, to be relieved touching the matters in said bill contained:

We therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin you, the said Board of Levee Commissioners, D. C. Love, T. J. Wyatt, & L. T. Baskett, under the penalty of one thousand dollars, to be levied of your goods & chattels, lands & tenements, to our use, that you absolutely refrain from any and all further proceedings to enforce the

collection of the levee tax for the Yazoo & Mississippi delta district, levied by virtue of the act entitled "An act to incorporate the board of levee commissioners for the Yazoo & Mississippi delta," approved Feb'y, 1884, against the Yazoo & Mississippi Valley Railroad Company or any part thereof, its rolling stock, stations, tanks,
62 and other fixtures and appurtenances, or by any other means, and from any further proceedings against the said complainant touching any of the matters in said bill contained, until after the hearing before the Hon. R. A. Hill, at chambers, in Oxford, on the 26th day of July, 1888, or until our said court shall make another order to the contrary.

Issued 14th day of July, 1888.

[SEAL.] JAS. M. McKEE, *Clerk*,
P'r R. H. WINTER, *D. C.*

To the marshal of the northern district of Mississippi to execute & return.

[SEAL.] JAS. M. McKEE, *Clerk*,
P'r R. H. WINTER, *D. C.*

This writ is to be executed on W. H. Stoval, president of board.

Return.

Executed, July 18, 1888, this writ by posting a true copy of the same on the door of the defendant's usual place of abode in Coahoma county, Miss., the defendant not being found and there being no person of his family aged 16 years found at his usual place of abode willing to receive the same.

J. M. LIDDELL,
U. S. Marshal,
By C. F. SMITH,
Special Deputy.

Charles Firman Smith is hereby appointed special deputy U. S. marshal, northern dist. of Miss., to execute & return the within writ.

Given under my hand & seal this 16th of July, 1888.

J. M. LIDDELL, [SEAL.]
U. S. Marshal, So. Dist. Miss.

63 U. S. Court. In Chancery.

UNITED STATES OF AMERICA, *Southern District of Mississippi*, } *To wit:*

To the Board of Levee Commissioners for the Yazoo & Mississippi Delta; D. C. Love, sheriff & tax-collector of Yazoo county; T. J. Wyatt, sheriff & tax-collector of Holmes county; L. T. Baskett, sheriff & tax-collector of Le Flore county, Greeting:

Whereas it hath been represented to us, in our said court of chancery, on the part of Yazoo and Mississippi Valley Railroad Com-

pany, complainant, that it has lately exhibited its bill against you, defendants, to be relieved touching matters in said bill contained:

We therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin you, the said Board of Levee Commissioners, D. C. Love, T. J. Wyatt, & L. T. Baskett, under the penalty of one thousand dollars, to be levied of your goods and chattels, lands & tenements, to our use, that you absolutely refrain from any and all further proceedings to enforce the collection of the levee tax for the Yazoo-Mississippi delta district, levied by virtue of the act entitled "An act to incorporate the board of levee commissioners for the Yazoo & Mississippi delta," approved February, 1884, against the Yazoo & Mississippi Valley Railroad Company by the seizure or sale of the railroad of said company or any part thereof, its rolling stock, stations, tanks, and other fixtures and
64 appurtenances, or by any other means, and from any further proceedings against the said complainant touching any of the matters in said bill contained, until after hearing before Hon. R. A. Hill, at chambers, in Oxford, on the 26th day of July, 1888, or until our said court shall make another order to the contrary.

Issued the 14th day of July, 1888.

To the United States marshal for the southern district of Mississippi to execute & return.

[SEAL.]

JAS. M. McKEE, *Cl'k*,
P'r R. H. WINTER, *D. C.*

Return.

Rec'd July 14th, 1888, — W. L. Durkins, U. S. marshal. Executed personally on D. C. Love, sheriff of Yazoo county, at Yazoo City, and on L. P. Waite, sheriff of Le Flore county, at Greenwood, and on T. J. Wyatt, sheriff of Holmes county, at Lexington, by handing to each a true copy of this writ this 18th day of July, 1888.

W. L. DURKINS,
U. S. Marshal,
By S. LIVINGTON, *D. M.*

Ret. executed & filed July 19th, 1888.

JAS. M. McKEE, *Cl'k*,
P'r R. H. WINTER, *D. C.*

65 YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Complainant,

vs.

THE BOARD OF LEVEE COMMISSIONERS FOR THE YAZOO-MISSISSIPPI DELTA; D. C. LOVE & *et al.*, Sh'ffs & Tax-Collectors, Defendants.

Be it remembered that this cause coming on this day on the application of the complainant for the issuance on [of] an injunction restraining the defendants from the collection of levee taxes in the

complainant's bill mentioned, the hearing of which was postponed to this day by the consent of both parties, a temporary injunction having been granted until further order to be made herein, and the court now being fully advised in the premises, after hearing the parties, and being of opinion that the injunction should be granted, doth now order that the said temporary injunction be continued in force, as though it had been granted on notice, until the fur-
66 ther order or decree of this court, and the parties obligors in the said injunction bond heretofore given and filed herein being present in court and consenting thereto, the said injunction as [is] ordered to continue in force as aforesaid on the security of said bond.

R. A. HILL, *Judge.*

67 In the Circuit Court of the United States for the Southern District of Mississippi.

YAZOO & MISSISSIPPI VALLEY R. R Co.
vs.
BOARD OF LEVEE COMMISSIONERS *et al.* } No. 516.

Demurrer.

The defendants, by protestations, not acknowledging all or any or [of] the charges in complainant's bill to be true in manner and form as therein charged, do demur thereto, and for cause of demurrer show—

1st. There is no ground alleged giving this court jurisdiction of the matters charged.

2nd. This court has no jurisdiction of the matters charged.

3rd. There is no equity on the face of the bill.

4th. Complainant's charter, as set forth in the bill, does not exempt from levee taxes, and if it did the contingency on which exemption is based—reaching the Mississippi river—has not occurred, as the bill shows.

68 5th. If said charter did, on its face, exempt from levee taxes it could not control the power of subsequent Legislatures to impose such taxes, which they have done, as shown by the bill, such power would be in conflict with sections 13 & 20 for [of] article 12 of the constitution of the State of Mississippi.

6th. Said sections 13 and 20 of article 12 of the constitution of said State had been construed by the supreme court of said State to the effect stated in the 5th clause of this demurrer years before said complainant's charter was granted, and this construction was a part of the law of said State long before said charter was enacted.

7th. No question arrises in this case upon the inviolability of contracts under the Constitution of the United States. That Constitution has reference to valid contracts, not void contracts, not
69 contracts which it is *ultra vires* in a State Legislature, under its own constitution, to make.

8th. Building levees by local taxation is a police power which the Legislature cannot bargain away.

Wherefore and for other errors and imperfections the defendants pray the judgment of this court whether they shall be compelled to make any further or other answer to said bill or its charges, and that they be dismissed hence with their reasonable costs in this behalf sustained.

CALHOUN & GREEN,
Sol's for Defendants.

We certify that in our opinion the foregoing demurrer is well founded in point of law.

CALHOUN & GREEN,
Sol's for Defendants.

UNITED STATES OF AMERICA,
Southern District of Mississippi, } *ss:*

70 This day came S. S. Calhoun, as solicitor and agent of defendants in the foregoing bill, and made oath that the foregoing demurrer is not imposed for delay.

—— ——.

Sworn to & subscribed before me this — day of ——, A. D. 1888.

—— ——.

We waive affidavit to the foregoing demurrer.

W. P. & J. B. HARRIS,
Solicitor- for Complainant.

Filed August 7th, 1888.

JAS. M. McKEE, *Clerk,*
P'r R. H. WINTER, *D. C.*

71 *Agreement.*

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

THE YAZOO & MISSISSIPPI VALLEY R. R. Co.
vs.
THE BOARD OF LEVEE COMMISSIONERS *et al.* } No. 516.

It is agreed that the whole, or such parts *of* as may be desired, of any acts of the Legislature of the State of Mississippi to be found in the printed acts which any party to the above-styled cause may wish to use at the hearing on demurrer to the bill therein germanto the question shall be treated as recited at length, with proper averments, in the bill, and shall constitute a part of the record to be made up by the clerk of the court should — be an appeal to the Supreme Court of the United States.

W. P. & J. B. HARRIS,
Solicitors for Complainants.
CALHOUN & GREEN,
Sol's for Def'ts.

Filed August 7th, 1888.

JAS. M. McKEE, *Cl'k,*
P'r R. H. WINTER, *D. C.*

72 *Final Decree.*

THE YAZOO & MISSISSIPPI VALLEY R. R. CO.
vs.
THE BOARD OF LEVEE COMMISSIONERS FOR THE YAZOO & MISSISSIPPI DELTA *et al.* } 516.

This cause coming on this day to be finally heard on the demurrer of the defendants to the original bill of complainants, and the same having been argued by the solicitors of the several parties and fully considered by the court, it is ordered, adjudged, and decreed that said demurrer be sustained and said bill be dismissed, and that complainant pay all the costs of this cause, for which execution may go; and complainant prayed an appeal in open court from this decree, which was allowed, and a bond of twenty thousand dollars required, to act as a supercedeas, which bond was given with W. P. Harris & James Fentress sureties thereon, which was approved by the court.

Ordered, adjudged, & decreed this 28th day of November, A. D. 1888.

R. A. HILL, *Judge.*

Filed & entered, Book 6, page 179, Nov. 28th, 1888.
JAS. M. McKEE, *Clerk,*
P'r R. H. WINTER, *D. C.*

73 I, James M. McKee, clerk of the circuit court of the United States for the southern district of Mississippi, certify the above and foregoing 72 pages is a true and correct transcript of the record and proceedings in said circuit court in the above-entitled cause.

Given under my hand and the seal of said circuit court, at Jackson, this January 25th, 1889.

[Seal U. S. Circuit Court, Southern District of Mississippi.]

JAMES M. McKEE, *Clerk,*
P'r R. H. WINTER, *D. C.*

Rec'd of W. P. Harris, att'y, $15.35, my fees for the transcript in the above cause.

JAS. M. McKEE, *Cl'k,*
P'r R. H. WINTER, *D. C.*

73½ *Bond.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

In the Circuit Court of the United States for said District.

Know all men by these presents that we, The Yazoo & Mississippi Valley Railroad Company, as principal, and James Fentress, and Wily P. Harris, as security, are held & firmly bound unto the Board of Levee Commissioners of the Yazoo-Mississippi Delta, D. C.

Love, T. J. Wyatt, & L. T. Baskett in the penal sum of twenty thousand dollars; for the payment of which, well & truly to be made, we bind ourselves, our successors, executors, administrators, & representatives, jointly & severally, by these presents, as witness our respective seals this the 28 day of November, A. D. 1888.

The above obligation is subject to the following conditions, viz: Whereas, on the 28th day of Nov., A. D. 1888, a final decree was rendered by said above-named *court* circuit court against the Yazoo & Mississippi Valley Railroad Company in favor of the above-named obligees, dismissing the original bill of the said Yazoo & Mississippi Valley Railroad Company with costs;

And whereas said company feels itself ag-rieved by said decree and has demanded an appeal therefrom to the Supreme Court of the United States, to the next term thereof, to be holden at Wash-
74 ington on the 2d Monday of October next, which was granted in open court, to operate as a supersedias, on the execution of this bond:

Now, if the said Yazoo & Mississippi Valley Railroad Company shall prosecute its appeal with effect and answer all damages and costs if it fails to make its plea good, then this obligation to be void; otherwise to remain in full force & virtue.

YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY.
—— FISH, *President.*

Attest:

JAMES FENTRESS, [SEAL.]
By W. P. HARRIS, *Attorney-in-Fact.*
W. P. HARRIS *Secretary.* [SEAL.]

Filed Nov'r 28th, 1888.

JAS. M. McKEE, *C'lk,*
P'r R. H. WINTER, *D. C.*

I, James M. McKee, clerk of the circuit — of the United States for the southern district of Mississippi, certify the foregoing 3 pages to be a true transcript of the appeal bond & assignment of errors in the above-entitled cause.

Given under my hand & seal of said court this Jan. 25, '89.

[Seal U. S. Circuit Court, Southern District Mississippi.]

JAS. M. McKEE, *C'lk,*
P'r R. H. WINTER, *D. C.*

75 *Assignment of Errors.*

UNITED STATES OF AMERICA:

Supreme Court of the United States. October Term, 1889.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Appellant,

vs.

THE BOARD OF LEVEE COMMISSIONERS FOR THE YAZOO-MISSISSIPPI DELTA, and Others, Appellees.

On appeal from the decree of the circuit court of the United States for the southern district of Mississippi.

The appellant comes, &c., and complains that in the pleading and decree of the said circuit court in the above-entitled cause there is error, in this, to wit:

1st. The said circuit court — in sustaining the demurrer of the appellees to the appellant's bill of complaint.

2d. The said circuit court erred in its decree dismissing the appellant's bill and denying the relief therein prayed.

W. P. HARRIS,
Sol'r for the Appellant.

Filed Nov. 30th, 1888.

JAS. M. McKEE, *Clerk*,
P'r R. H. WINTER, *D. C.*

Endorsed on cover: S. Mississippi C. C. U. S. No. 1087. The Yazoo & Mississippi Valley Railroad Company, appellant, *vs.* The Board of Levee Commissioners of the Yazoo-Mississippi Delta; D. C. Love, sheriff and tax-collector of Yazoo county, *et al.* Filed February 2, 1889.

Office Supreme Court U. S.
FILED.
JUL 22 1889
JAMES. H. McKENNEY,
CLERK.

UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO., APPELLANT,

v.

THE BOARD OF LEVEE COMMISSIONERS FOR THE YAZOO-MISSISSIPPI DELTA, ET AL.

ON APPEAL FROM THE DECREE OF THE CIRCUIT COURT OF THE UNITED STATES FOR SOUTHERN DISTRICT OF MISSISSIPPI.

BRIEF FOR APPELLANT.

BY W. P. & J. B. HARRIS.

UNITED STATES OF AMERICA.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

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The appellant railroad company filed its original bill in equity in the said circuit court, against the defendants, the Board of Levee Commissioners and certain persons, sheriffs and tax-collectors, to enjoin the collection of taxes levied by an Act of the Legislature creating said Board of Commissioners, for the purpose of providing a fund for the payment of the principal and interest of bonds authorized to be issued by the Board, the proceeds of which were to be applied to the construction and repair of levees on the Mississippi river. The bill alledges that the taxes sought to be collected are unauthorized and illegal, because by its charter, which was prior in date to the Act creating the said Board, and imposing the taxes, the said railroad

company is exempt from taxation; that the law creating the said Board, and imposing the taxes, declared the property of railroad companies whose roads or any part lay in the Levee District created by the Act, subject to the levee taxes, any exemption in the charters of said companies to contrary notwithstanding; that this imposition of levee taxes by the Legislature, and the repeal of the charter exemption from taxation was in violation of the charter contract and impaired the obligation of such contract, and thus violated the Constitution of the United States, and the bill thus makes the controversy one arising under the Constitution of the United States.

The bill makes out its claim by citing the laws bearing on the subject, and by allegations of matters of fact: the acceptance of its charter, the prosecution of the work of constructing its system, the completion for operation of 140 miles of road, part of which was in the levee district. The railroad company was incorporated by a special law, approved February 17, 1882. Acts of 1882, p. 838.

We extract such parts of the Act as bear upon the questions to be considered, including the preamble as descriptive of the character of the undertaking in which investors were invited to enlist.

PREAMBLE.

"WHEREAS, The construction of railroads to, in, through and along the Mississippi river basin, and the Yazoo and Sunflower river basins, penetrating these and other alluvial lands in this State, west of the Chicago, St. Louis and New Orleans Railroad, and connecting them by railroad and branches with other railroads west, east, north and south, is deemed and hereby declared to be a work of great public importance and in strict accordance with the true policy and interest of this State, should be encouraged by legislation and liberality; and

WHEREAS, The physical difficulties of constructing and maintaining railroads to, across, along or within either the Mississippi, Sunflower, Deer Creek or Yazoo bottoms or basins, or the other alluvial lands herein referred to, are such that no private company has so far been able to establish a railroad and branches developing said basins and alluvial lands and connecting them with the railroad sys-

tem of the country; now, therefore, in order to induce the investment of capital in the construction and operation of such a railroad and branches, and thus develop the resources of this State," etc.

"SEC. 2. *Be it further enacted*, That the said corporation shall also have, and it is hereby authorized and invested with the right and power to build and construct, and thereafter to use, operate, own and enjoy a railroad or railroads, with one or more tracks, into, along and across that part of the State of Mississippi, lying between the Mississippi river and the Chicago, St. Louis and New Orleans Railroad on such line or lines as shall be deemed best by the Board of Directors of the company hereby chartered; one of said lines or a branch thereof, to reach the Mississippi river at or near a point opposite Arkansas City if practicable, so as to connect such point on the east bank of the Mississippi river with some point or points on the line of the Chicago, St. Louis and New Orleans Railroad, one of said lines or a branch thereof to pass through Yazoo City, Mississippi; and said company shall have the right and power, and are hereby authorized to build one or more branches or lines of railroads between the "Mississippi river and Deer Creek, and between Deer Creek and the Sunflower river, and between the Sunflower river and Yazoo river, in the direction of or to the north line of this State, and extend the same, or any one thereof in the direction of or to the south boundary line of this State, as shall from time to time in the judgment of said company be deemed proper; and shall also be authorized to construct and operate such spurs or laterals from or along such main line or branches, not exceeding one hundred miles in length, as may from time to time be necessary or proper to fully develop said country lying west of the Chicago, St. Louis and New Orleans Railroad and east of the Mississippi river, in this State; and the said company as soon as, and whenever from time to time they have located said line or lines of railroad or branches, spurs or laterals thereto, or any of them, shall file in the office of the Secretary of State a statement showing the general line thereof, so far as the same has up to that time been located."

SEC. 8. *Be it further enacted*, That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will ~~or~~ and will not impose thereon, it is

hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted—not to include compresses and oil mills—shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river, but not to ~~exceed~~ extend beyond twenty-five years from the date of the approval of this Act; and when the period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate as other property in this State. All of said taxes to which the property of said company may be subject in this State, whether for county or State, shall be collected by the Treasurer of this State and paid into the Treasury to be dealt with as the Legislature may direct, but said company shall be exempt from taxation by cities and towns."

"Section 13. * * That unless said Company shall construct and have in operation twenty miles of railroad within three years from the passage of this Act, the Legislature shall have the right to declare this charter forfeited."

"Section 14. * * That all Acts in conflict with this Act, or any part thereof, be, and the same are hereby repealed; and that this Act take effect and be in force from and after its passage—the public welfare requiring it."

At the date of this Act the taxation of railroads was separately provided for by the Mississippi Code of 1880, p. 194, under the heading "Taxation of Railroads." The bill points to this taxation in general terms. We give a synopsis of the sections of the Code necessary to exhibit the taxation which the general law imposed on railroad property at the date of the charter in question:

Section 597 provides that each railroad company operating a railroad in this State shall, on or before the second Monday in August of each year, file with the Auditor of Public Accounts a complete schedule of all its property, real and personal, setting forth the length in miles of its road bed, switches and side-tracks, showing the number of miles and fractions in this State, in each county, and in each incorporated town, and the value of the whole, and each part as herein subdivided, capital stock, bonded indebtedness, the rolling stock, depot buildings, workhouses and machine shops, car shops, and stationary machinery, and the county and town in which situated, and the land on which they are situated, together with all other real, mixed and personal property.

Section 599 requires: the Auditor, when this schedule has been filed, and also in cases when it has been refused, is directed to notify the Governor of the State of the fact, who shall proceed to convene the Auditor, Treasurer and Secretary of State, who, thus convened, shall assess the value of each railroad for purposes of taxation, and shall certify the same to the Auditor of Public Accounts.

Section 600 provides the means of ascertaining the value and items of the property. This Board of Assessors is directed to value the entire road and property, that value is to be divided into the number of miles in the State, and the valuation for each county is to be according to the number of miles of the road in each. The number of miles for the State shall be the product for State taxes, and the number of miles in each county the product for county taxes; and, having thus ascertained the sums to be taxed, they shall certify the same and the facts to the Auditor.

Section 601 adds ten per cent. on the amount of taxes assessed against railroad companies failing to file schedules as directed by Section 597.

Section 603 provides that when the valuation so ascertained and certified has been furnished to the Auditor he shall ascertain the taxes due the State and counties, and notify the companies of the amounts due to the State, by letter or otherwise, and shall certify the ~~same~~ sums due to the several counties to the Clerk of the Chancery Court of the county, and the amount due to cities and towns to the mayor thereof, and the sums so certified shall be entered on the collector's books, to be collected as other taxes; and the Auditor shall collect the taxes due the State, by distress warrants issued to any sheriff, authorizing the seizure and sale of personal property in the county; and, should the personal property be insufficient, the Auditor may sell the entire road and branches, to the highest bidder, and the purchaser shall be put in possession.

Section 605. The county taxes are to be collected as all other taxes.

Section 606. "Railroad property situated in any city or incorporated town may be taxed for city and town purposes, upon a valuation thereof made upon the same basis as the property of individuals, and this section is to apply to the foregoing as well as to the following modes of taxation herein provided for."

Section 607 provides that every railroad accepting this Act, and annually paying to the Auditor of Public Ac-

counts the taxes hereinafter provided for, and signifying their acceptance in writing, shall be exempt from all the foregoing provisions, except Section 606 in relation to cities and towns, and such payment shall be in full of all State and county taxes; fifty per cent. of the amount paid to be placed to the credit of the counties through which the railroad may pass, to be divided amongst them according to the number of miles in each. Lands owned by such railroad companies, and not used in operating the roads, shall be taxed as other property and for all purposes.

PRIVILEGE TAX ON EACH RAILROAD COMPANY.

Section 608. Each railroad company whose line is, in whole or in part, in this State shall, if it accept the provisions of this Act, pay to the State Treasurer, on warrant of the Auditor, on or before the 31st day of December in each and every year, a privilege tax, as follows. [Here follows the existing railroads in the State, their names being given and the sums required of each.] "Provided that no railroad company shall be subject to taxation under this chapter while the same is in process of construction; but if any part of any road shall be finished and used for profit the part so finished shall be taxed, although the whole road may not be finished."

The railroad company organized under its charter promptly, and in 1884 had complete for operation a line from the city of Jackson, on the Chicago, St. Louis & New Orleans railroad to Yazoo City, on the Yazoo river, a distance of forty-five miles, at which place the road entered the Yazoo-Mississippi Delta Levee District, and proceeding northwardly along the Yazoo valley or basin, through the counties of Yazoo, Holmes and Leflore, three of the counties embraced in the Levee District; the first and third named counties being embraced in the district as first formed, and the county of Holmes being afterwards added. In 1885, 1886 and in 1887 the road, in its several stages, was completed for business in its parts, the whole extent of road in operation in 1887 being 140 miles—100 miles being in swamp country, and much of it in the district subject to overflow; but the road has not, so far, been extended to the Mississippi river.

This Company had claimed exemption from taxation, and the claim allowed or acquiesced in by the revenue officers of the State during this time.

In 1884 the provisions of the Code of 1880, before referred to, to-wit: sections 604, 607, 608, were revised. Section 604, so far as it authorized the putting of a purchaser of a railroad, under tax sales therein authorized, in possession of the road, was repealed. Section 607 was so amended as to give to the railroad counties two-thirds of the privilege tax in lieu of fifty per cent. before allowed. Section 608 was amended by increasing the amount of the privilege tax imposed on the several railroads enumerated in the Code, and it was provided that all other railroads not so enumerated, and not exempt from taxation by their charters, should pay a privilige tax of sixty dollars per mile. Acts of 1884, pp. 29-30.

In 1886 this tax was raised twenty-five per cent. Acts, p. 23. The Yazoo & Mississippi Valley Railroad Company was not among the enumerated roads, and, if affected by the act, was only affected by the provision as to the tax on roads not enumerated and not exempt from taxation by their charters. With these alterations the provisions of the Code are substantially preserved.

In 1888, the Legislature passed an Act, general in its terms, but in point of fact, intended to meet the case of this particular railroad, both as to general taxes and the levee taxes, and to deny or override its claim of exemption, and providing for collection of back taxes. The first section is in these words:

"SECTION 1. * * That every railroad that has failed to pay the taxes for which the same was liable for any year for which it was so liable, such railroad not being exempt by law or its charter from taxation for such years, and so being liable to taxation, shall be assessed for, and shall pay an ad valorem tax to be assessed as hereinafter provided, unless such railroad shall within sixty days after the passage of this Act, pay the taxes for which the same was liable according to its charter or pay the privilege taxes for which the same was liable as follows: if a standard or broad gauge road for the years prior to 1884, eighty dollars per mile; for the years 1884 and 1885, one hundred dollars per mile: for the years 1886 and 1887, one hundred and twenty-five dollars per mile."

There is a less rate for narrow-guage roads. The road of the Yazoo and Mississippi Valley Railway Company is of the standard gauge, and this Act places it in the scale of roads of the first-class, or highest rate, according to the Code of 1880, and the Acts of 1884, and the increase made by the Acts of 1884 and 1886, is preserved accordingly.

This Act, in terms, applies to levee taxes unpaid, "that the several tax-collectors * * * shall proceed to collect such taxes—State, county (and levee, if any.") Acts of 1888, pp. 49, 51.

These levee taxes have their origin as follows:

In 1884 the Legislature of Mississippi incorporated the "Board of Levee Commissioners for the Yazoo-Mississippi Delta," creating a levee district, embracing three river-front counties, and parts of three back counties, subject to inundation by overflow from the Mississippi river, ~~a levee district~~, and to the number of back counties was added in 1888 another county, with authority to construct, repair and maintain a levee on the river front.

By the 9th section of the Act of incorporation the Board of Commissioners was empowered to issue coupon bonds for five hundred thousand dollars, payable in twenty years, bearing interest at 8 per cent. The bonds were to be sold and the proceeds applied to the construction of the levee.

By the 13th section it is enacted, "That for the purpose of paying the bonds and coupons issued, negotiated or sold by said board as heretofore provided, and any other indebtedness or liability legally contracted by said board, an ad valorem tax of thirteen mills on the dollar upon the assessed value of all property, real and personal, in the front counties of Tunica and Coahoma, and that part of DeSoto county included in said levee district, and a similar tax of nine mills on the dollar upon the assessed value of all property, real and personal, lying and situate in the remaining or back counties of said levee district, or so much thereof as may be necessary, is hereby levied and

assessed for each and every year, until all of said bonds and interest and other indebtedness is fully paid."

By the 14th section it is enacted "That for the purposes of this Act the property of all railroad companies and other corporations of every kind, both real and personal, lying, situated and being within the limits of said levee district, shall be taxed just as the property of individuals is herein taxed according to its location, any exemption from taxation, donation of taxes, or other such provisions contained in the charter of such railroad company or other corporation or in any law heretofore passed by the legislature to the contrary notwithstanding; and said ad valorem tax of thirteen mills, or nine mills on the dollar, according to location, is hereby levied and assessed upon all the property of said railroad companies or other corporations.' Acts of 1884, pp. 140, 148, 151, 152.

By an Act passed in 1886, the Board of Commissioners was authorized to make a further issue of bonds to the amount of four hundred thousand dollars for like purposes. The ad valorem tax on real and personal property was increased, and a tax on privileges, on business pursuits and occupations within the district, and also a tax on cotton produced in the district,

ACTS OF 1886, P. 100.

These are the levee taxes referred to in the Act of 1888, which not having been therefore enacted, owing to the claim of exemption, it was the purpose of that Act to collect as back taxes. The bill seeks not only to prevent the collection of back taxes, but the taxes of the year 1888, and all subsequent years—and the injunction prayed for extends to the whole period of taxation. The amount of the levee tax now assessed and sought to be collected for the back years amounts to the sum of $11,000.

The defendants joined in a demurrer to the bill, and the grounds of demurrer stated are:

1. That the court has no jurisdiction of the matter set up in the bill.

2. The complainants' charter contains no exemption

from levee taxes, and if it does, the contingency on which it is to take effect has not happened.

3. If such exemption is found in the charter as claimed, it could not bind the Legislature to respect it under sections 13 and 20 of the 12th Article of the State Constitution, which had been construed not to have such effect by the supreme court of the State before the charter was granted.

4. The Constitution of the United States protects only such contracts as are valid, and this contract was not within the power of the Legislature.

The circuit court sustained this demurrer on the second point and dismissed the bill, and from the decree dismissing the bill the complainant appealed. Rec p 20

The following points are presented on the errors assigned:

1. The subject matter of the bill, that is, the ground for equity cognizance, is well established.

Allen v. Balt. and Ohio R'y Co., 114 U. S., 311.

The code of Mississippi, of 1880, gives to courts of equity such jurisdiction—code of 1880, § 1831; but this is declaratory of the law.

2. That the power of the federal judiciary under the contract clause of the Constitution of the United States, to construe for itself the constitutions and statutes of the States in cases arising under the clause, is unfettered by the adjudications of the States construing them in their bearing on the contract in question, is settled by many adjudications of this court.

Jefferson Branch Bank v. Shelby 1 Black 436.

University v. People, 99 U. S., 309; Louisville and Nash. R'y Co., v. Palms, 109 U. S., 244.

3. The legislative intent in the charter was to grant exemptions from taxation to begin at the date of the Act of incorporation.

4. That State taxes mean taxes imposed by the legislature of the State, and that taxes and burdens would include even "local assessments," but this levee tax is strict-

ly a tax on every species of property, real and personal. It bears on a 'district' but is for a public object. "Local assessments" are confined to real estate and bind the land only and not the person.

Cooly on Taxation, 606, 607. Macon v. Patty, 57 Miss., 378, 386.

The cases in which the supreme court of Mississippi has held "levee taxes" to be "assessments" are cases in which the tax was levied on land only.

Vasser v George, 47 Miss., 713.

This is a tax imposed by a legislative act on real and personal property, privileges and occupations, annually, for an indefinite time, and may be "district taxation," but is not an "assessment."

5. The Constitution of the State of Mississippi does not disable the Legislature to grant exemptions from taxation by contract with individuals or corporations, binding on the State.

The third point stated rests on the construction of the charter of the appellant company, and is really the beginning point in considering the case. The 8th section, which is quoted at large in the statement of the case, and the declarations, avowals and terms employed in it, render it exceptional and peculiar, and we find no precedent which in our view governs the construction; for, unlike the case of *Railroad Co. v Dennis, 116 U. S., 665*, where there was but the barren phrase "after completion," without other indication of intention, we have here an entire section devoted to the subject of the taxation to be borne by the company, the extent of the exemption as respects the kind of property, with a scheme of taxation which was to take effect "after the period of exemption shall have expired."

For the ~~plaintiff in error~~ the contention is, that taking the whole expression of legislative purpose, as contained in the 8th section, its provisions, declarations, and avowals the legislative will is found, and that will fairly appears to be, that the exemption was absolute to begin presently, but that its duration was to be determined by one of two measurements provided, to be applied as the event might

indicate, and the one which ~~could~~ can be first applied, is to be applied, to end the exemption, and the combined effect of the two parts of the clause in which the duration of the privilege is expressed, is, to give more than twenty years (as some time must elapse before reaching the Mississippi river by a "line or branch") but not to exceed twenty-five years from the date of the act.

To render what we may say on the subject intelligible, we state, that the opposing view discards all the section except the words of the granting clause, all that precedes and all that follows them, as meaningless, and by this process the conclusion is formed, that the whole section was dependent for its taking effect, on the contingency of the Company's extending a "line or branch therefrom to the Mississippi river," and as that has not happened no exemption can be claimed.

We submit argument on the question thus presented, and also on the other points stated as to the power of the Legislature to make irrepealable contracts by charter exempting property of corporations from taxation.

ON THE FIRST POINT.

The legislature which chartered the railroad in question, was impressed with the wants of the district of country between the Chicago, St. Louis and New Orleans railroad, a road running north and south through the State, over its uplands, and the Mississippi river, its breadth being about fifty miles east and west, and its length more than two hundred miles north and south. No direct single line east and west from any point on the base.—The Chicago, St. Louis and New Orleans road to the Mississippi river would have fulfilled the objects of the charter. Such a line would have encountered the difficulties of railroad building through the swamp, and across streams, and over ground subject to frequent destructive overflows, and yet it would afford communication by rail to a very limited area of country. The connection of the system of roads proposed with the river, is spoken of in terms different from those employed as to Yazoo City, a perfectly feasible extension. The ex-

tension of a line or branch to the Mississippi river is to be accomplished if found practicable. It is characterized as doubtful, and does not stand in the scheme projected, as the paramount object—a *sine qua non*. It was doubtless a thing contemplated as desirable, but it was not absolutely required, and was not treated as essential to the development of the country. The term "practicable" is used as investors would understand the word—that is practicable with reference to the outlay and the return for it. It is *possible* to make a road anywhere on land. We affirm, that the connection of the system with the Mississippi river, was a secondary and non-essential object. It is not mentioned in the preamble which describes the scheme as one to connect the swamp with *railroads*.

So we contend that there is no foundation for the assumption, that this connection occupied in the system devised, such prominence, that the legislature was impelled to make the aid which the enterprise needed, and which is profusely promised, dependant on a connection with the Mississippi river. It appears in the charter as a thing which might be indefinitely delayed, and on *justifiable grounds*, abandoned, and yet much benefit accrues to the swamp country from lines connecting railroads only. Indeed, it is clear to any comprehension, that the swamp country, under the ample provisions and powers granted in the second section, could be thoroughly developed by a system of roads without contact with the river at all, and aid to a road or roads, was manifestly intended, without regard to ultimate extension to the Mississippi river.

We now approach the eighth section of the Act, which it will be perceived relates entirely to the subject of the taxation of this road or roads and exemptions. The usual scope of such special regulations of taxes is to make the regulation exclusive of all other regulations. They are intended to be complete for the particular enterprise and corporation. It is a rule that when a particular Act assumes to regulate the entire subject of it, it is exclusive.

Buck vs. Swan, 40 Miss., 268; Gibbons vs. Brittenum, 56 Miss., 232.

This section, by the avowal in the beginning, by its terms and scope, was to be all the law for this corporation, as to taxation and exemption. It declares that the property which the investors are invited to create, when it shall come into existence, shall stand toward the tax laws existing, and to follow, under two conditions—one of exemption and one of taxation, and exemption shall precede taxation—exemption first and taxation afterward.

The avowal of an intention to make *certain* the taxes and burdens which are to be borne, and those to be foreborne, cannot be rejected. The investors are told by it, that they need not explore the revenue laws of the State existing, nor speculate as to those which may follow, but to look to the terms of this section as a certain guide, and in the face of such a declaration, and in view of its object, silence is negation; as nothing pertaining to taxation and exemption was to be left unsaid, nothing is to be implied. It cannot, in the face of the explicit declaration contained in this section, be maintained, that in spite of it, the legislature intended to reserve, tacitly, the power to tax the property to be brought into existence at will, to an indefinite extent, and for an indefinite time, that is, until the happening of an uncertain event in the future, to-wit: the crossings of the swamp country by a line or branch to the Mississippi river.

The explanation of an omission so important, after an avowal so explicit, is, that the Legislature assumed, that the exemption was to have its natural and usual beginning at the date of the grant. The section is pregnant with this idea. It speaks only of a taxation after the period of exemption herein granted shall have expired. The suggestion that when exemption is postponed to a future event, taxation, until the event happens, must be implied, begs the question in issue. We urge the omission to *speak* as a reason why the exemption was *not* to be postponed, and taxation was to await its expiration. The peculiar character of the section, novel and unusual in its provisions and

avowal, reverses the rule, and excludes those inferences and implications in favor of taxation when an Act is *merely* silent as to the particular subject of taxation, or as to a time when taxation shall begin. We call attention to the fact that the taxation which is to follow exemption, differs in one important particular, from that which, according to the opposing view, is to fall on the property before exemption. If it is conceded that the idea of valuing the road as a unit, and paying the whole tax in a lump sum to the Treasurer, is merely a convenience, as it stands in the eighth section, still it is a change, but, in addition to this, there is an exemption perpetual in duration, of taxation by cities and towns. Whereas, by the then existing law, cities and towns were allowed to tax railroads. This is to have the heaviest burden fall on the enterprise while in progress, and the lighter after the most difficult part has been accomplished.

The suggestion that the enterprise in progress was aided by the general law exempting railroads in process of construction from taxation, must be measured by the qualification that these words are limited to such parts of the line as are unfinished to completion for use. These words are followed in the general law of the Code before cited, "but if any part of any road shall be finished and used for profit the part so finished shall be taxed, although the whole road may not be finished."

Code, 195, § 608.

This exemption is not to be regarded as exemption during the time of outlay in the enterprise. The privilege is of very little practical value. The Legislature knew the course of railroad making in the country. Starting from some important center or base the road progresses and stations and villages spring up. The people on the line eagerly demand transportation, so there is a finishing for use of the line in progress. The application of the general law of railroad taxation does not supply or render needless the aid promised. The road, for example, is now complaining of a very heavy taxation imposed in its progress to completion, and before it is finished, and during the period of

heaviest outlay. It was never the course in this State to tax unfinished work. The exemption is illusory, and when its practical value is estimated it will be apparent that the Legislature could not have regarded it as a contribution to the enterprise of such exceptional difficulty as it was regarded at the time of the charter. See the extent of the privilege tax of 1885, 1886 and 1887 bearing on an unfinished road, Act of 1888 before cited.

The eighth section of the charter, viewed as a whole, evinces an intention that exemption shall begin at the date of the Act. Its terms and declarations, can be reconciled, on no other rational conception of its import.

Assuming the beginning point of the period of the exemption to be at the date of the grant, and that taxation was to begin only after the period had expired, it was important that the duration should be fixed, and the peculiar form in which that duration or extension from the date of the grant is expressed, is due to a purpose to give as much of the standard period of exemption, after the road reached the river, as might be obtained out of a whole period of twenty-five years.

It is not uncommon to express duration, with reference to an event in the future, by fixing a certain number of years after the event, in the computation of a longer period. The privilege is to last for twenty years from one event, but not to extend over more than twenty-five years from another event, the approval of the Act, altogether. The Legislature assumed, in adopting the form and words of the grant, that the exemption was to begin at the date of the Act. If the grant had been made by one part of the granting clause, the first, for a term of twenty years from the completion of said railroad to the Mississippi river, the period of taxation would have been indefinitely postponed, and might not happen at all, if the connection with the river, should be found impracticable by the investors. It was therefore necessary on the idea, that, left without other words, it would give an exemption of indefinite duration, and to taxation indefinite postponement, that the words "but not to extend beyond twenty-five years from the date

of the approval of this Act" should be added. The effect of the two parts being, to bring the actual duration within the period of twenty-five years from the date of the Act. It is a common use of "*from*" to convey the same idea as "*beyond*." The Legislature was expressing extension from a point assumed, and we find the words extend "beyond" and "from" as conveying the one idea. The words "but not to extend" apply not to the definite term of twenty years, but to a period of exemption of contingent duration. The *privilege*, the dimensions of which are measured by the joint effect of the two parts of the granting clause, was not, by the purpose to give it a certain extension beyond an event in the future, to be made to cover a period of enjoyment longer than twenty-five years, as the utmost limit. If the design was to give twenty years on the *condition* of reaching the river, it would have been needless to qualify the first part, and the supposition of the purpose to make the privilege dependant altogether, on the doubtful event, a supposition which belies the spirit and soul of the charter, may find an equally hostile temper in the added limitation, in the second part, as a penalty on delay in reaching the river, for it would in that view operate to discount the twenty years by every year of delay over five years in reaching the river.

Looking at the Acts of the Legislature of 1882, we search in vain for the evidence of a spirit so grudging, as to this most desired work of greatest difficulty, that aid promised with energetic profusion, should be delayed until the chief difficulty had been surmounted, and only on condition that without aid, it should be surmounted, and if delayed should cut down the *reward* promised.

It is only by a complete surrender to the idea that the legislature intended to falsify its promises, that we extract from the 8th section of the charter, the startling result, of a heavy, unlimited taxation reserved as a *vis a turgo*, and a possible exemption, and then a milder taxation.

This feat is accomplished by cutting away all the 8th section except the words "shall be exempt from taxation for a term of twenty years from the completion of said railroad to the Mississippi river; but not to extend beyond

twenty-five years from the date, etc.," and repelling the idea, that extension alone was in the mind of the legislature, and that the words were intended to fix the termination, and not the beginning of the exemption. With the section thus dislocated or mutilated, it is hoped to construct a reasonable doubt whether an absolute or contingent exemption was intended. And the contingent exemption being more favorable to the State, as the matter is viewed after the fact, that consideration will turn the scale.

The 8th section, by this view, is not to take effect in any of its provisions, unless the event considered doubtful at the time should happen, and that event being still delayed, the section is no protection from taxation, notwithstanding much work has been done, work of great public utility, in which the State promised assistance.

The Mississippi Legislature, of 1882, granted many railroad charters. There was in all of them, with perhaps one or two exceptions, an exemption from taxation for twenty years; that seemed to be the standard period. The charter to the Yazoo and Mississippi Valley Railroad was the earliest charter. There is much copying from this charter, and the one we select, because it relates to a railroad now in existence from the Chicago, St. Louis and New Orleans Railroad at Durant, Holmes county, to Aberdeen, in Monroe county, a road running north-east and through the uplands of the State east of the Chicago, St. Louis and New Orleans road.

Section 8. * * "that in order to encourage the investment of capital in the works which the said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which the State will, and will not impose thereon, it is hereby declared that said company, its stocks, its railroads and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted, not to include oil mills and compresses, shall be exempt from taxation for a term of twenty years from the date of the approval of this Act, and when the

period of exemption herein prescribed shall have expired, the property of said railroad may be taxed at the same rate of other property in this State. All of said taxes to which the property of said company shall be subject in this State, either for county or State, shall be collected by the Treasurer of the State, and paid into the treasury to be dealt with as the legislature may direct; but said company shall be exempt from taxation by cities and towns."

We do not find it easy to discover an intention to be less favorable to the more difficult and doubtful enterprise than to one perfectly feasible in all respects; the feasible project gets an absolute exemption for twenty years, while the one, the difficulties of which are emphasized, according to the opposing view, gets an exemption for twenty years contingent on surmounting the difficulties and reaching the Mississippi river, and withal subject to be discounted for every year over five years allowed to reach the river.

A contingent exemption would be a departure from the ordinary rule. The policy of the State has been to grant exemption to railroads in their charters, for a limited time. Twenty years is ordinarily given for a railroad in any direction in the State. It seems to be considered that any railroad that is worth operating, pays for the exemption by its indirect benefits to the country it serves. If it falls short of completion to a known terminus, or fails to reach points on the projected line indicated in the charter, the exemption for so much as has been constructed, is never forfeited. If the line is short, the concession by the State is small, and compensated to the public in its use.

ON THE SECOND POINT.

All that is contained in the constitution of Mississippi on the subject of the taxation of property, is found in two sections of article 12. See Code of 1880, p. 35:

"SEC. 13. The property of all corporations for pecuniary profit shall be subject to taxation the same as that of individuals."

"SEC. 20. Taxation shall be equal and uniform through-

out the State. All property shall be taxed in proportion to its value to be ascertained as directed by law."

This article in other sections evinces a purpose to guard the State and counties against becoming burdened with debt by loaning credit to, or becoming stockholder in corporations or associations, and against the creation by them of a paper currency. Secs. 5, 12, 14.

It is worthy of note that the constitution is silent as to charters of incorporation, reserving no power over them of repeal or alteration in any respect. It is silent as to the power to grant exemptions from taxation; and so far from exhibiting any jealousy of charter contracts, or alarm at the scope given to the contract clause of the constitution of the United States by the Supreme Court of the United States, the constitution of Mississippi nowhere speaks of contracts except to forbid the legislature to pass any law impairing their obligation. Art. 1, sec. 9.

The bargaining away of the public powers was not an evil of such proportions, in the opinion of the Constitutional Convention, as to demand restrictions to be placed on the discretion of the legislative body.

The contract clause of the Constitution of the United States is freely endorsed, with its load of judicial exposition, and in full view of its bearing.

There is found in many State constitutions of that period, (1869) restrictions of the power to grant exemptions from taxation, as leading to mischief, in use of that admitted power, but in the constitution of Mississippi there is no attempt to deal with the subject at all.

Its framers saw the evils of a paper currency, dependent on uncertain security for its redemption, and the evils of public debts, then conspicuous in many States, and especially in the neighboring State of Tennessee, and proceeded to guard against these by language directed unmistakably to that object, as is to be expected where, by an organic law, power is to be defined, or regulated, to avert known mischiefs.

If the purpose was to revolt against the doctrines of the

Supreme Court of the United States, as to charter contracts, there was in a constitution before them—the constitution of Iowa—a short form for making all charters repealable. "All charters of incorporation shall be subject to repeal."

If the property of corporations for pecuniary profit was to be excluded from the benefit of exemption from taxation, the purpose would have been expressed thus: "The legislature shall not exempt from taxation the property of corporations for pecuniary profit."

If the idea was to allow exemptions of such property, but to make them repealable, we would expect to find it expressed in these words: "All exemptions of property from taxation shall be held at the will of the Legislature."

If this qualification was intended to apply only to corporations for pecuniary profit, the idea would find expression thus: "All exemptions from taxation of the property of corporations for pecuniary profit shall be repealable."

The idea is simple, and would have taken the form of expression supplied by average capacity, applied to examples everywhere to be found, of apt language for expressing it. We do not find it.

It seems to be very clear that jealousy of the contract power—jealousy of corporations, jealousy of the privilege of exemption, find their roots and germs elsewhere than in the convention which framed this constitution.

The meaning of the two sections of Article 12 heretofore quoted, (Sections 13, 20,) was discussed in *Mississippi Mills v Cook, 56 Miss. Rep*, 40, and the conclusion reached by two of the three judges, that exemptions by charter contract of the property of corporations for pecuniary profit are forbidden by the first mentioned section (13), that is: exemptions by contract binding on the Legislature. The question has not been touched by that court since, and until 1884 we find no instance in which a repeal of a charter exemption has been enacted. There was a writ of error to the Supreme Court of the United States in *Mills v Cook*, but at a session of the Legislature occuring while the writ

was pending, there was a legislative compromise, by the terms of which the writ of error was dismissed by the plaintiff.

The result in the case cited cannot be regarded as a settlement of the question. There was not only the fact of dissent expressed on the bench, at the time, but the reasoning of the dissenting opinion takes from the decision of the majority all basis in logic or in precedent.

There is a concession that the exemption of the property of individuals, not associated under a charter, by legislative grant, whether repealable or irrepealable, is not prohibited, nor is the exemption of corporations for profit forbidden. Exemptions from taxation is admitted not to be an evil. It belongs to the taxing power as part of it. The exemption of such property is conceded not to be a discrimination under the "equal and uniform" clause as it has been held to be elsewhere. The conclusion, therefore, that exemption by charter contract is prohibited seems fanciful and strained.

It is indeed curious, that constitutional prohibition in reference to a matter of such great practical importance, should be discovered in a constitution where the subject of exemption is not mentioned, nor any equivalent expression employed. A limitation of an admitted power of great practical value, and constantly exercised, is thought to be discovered, although none of the known methods of giving expression to it is employed.

We mention here that the Iowa case, brought into view in the discussion in *Mills v Cook* was decided after the Constitution of Mississippi had been adopted. That decision was made in 1874. It does not furnish a rule for interpreting the Constitution of Mississippi of 1869.

We ask attention to the dissenting opinion of Mr. Justice Chalmers as it appears in the case reported, and before cited. We can add nothing to the argument there, and think it needs no support.

We suggest, however, that the compound character of the property of private corporations, the franchise, the stock, the visible and tangible property, the plant, etc. etc., admitted of oppressive, or double taxation, and lead to what may be

termed commutation of taxes, the adoption of certain standards of valuation of the whole enterprise in which the public sometimes suffered. Cooley on Taxation 377 et seq

With these known peculiarities of the property of corporations, and the known practice in taxation, the convention might well declare, that valuation and taxation of such property, should be arrived at in the same manner as in the case of individuals, by finding the valuation of everything that would be answerable for debts, and the taxation by the same standards applied to individuals.

It is irrational to proceed on the idea that a purpose hostile to contract exemptions, must be attributed to the convention, although no traces of it are anywhere found.

It cannot be assumed that the legislature of 1882, in adopting all the usual terms of contract stipulations, stating the inducement and consideration on both sides in respect to a public work pertaining to the "public welfare" supposed it was not making terms that were binding, or that section 8 stood in a different plight from the stipulation as to freight rates and passenger rates of transportation, which has been held to be a bargain, in the charter under consideration.

Stone et. al., v. Yazoo and Miss. Valley R'y Co., 62 Miss., 607.

It cannot be affirmed that the investors entered into the stipulations on the idea that they were not binding. Indeed the idea most prominent is that the enterprise was one of exceptional public importance, and the legislature was offering the inducement of inviolable pledges to those who would undertake it, and there is something of force in the view expressed by the judge of the circuit court of the United States in an opinion recently announced referring to this enterprise, that it had more of a public than a private character. The terms of the charter have all the character of a proposal, not to incorporate a company only, but a proposal to the company to undertake a public work on certain terms. Such a proposal made to individuals, or associations not "incorporated" if accepted would bind the legislature; why not if accepted by a corporation?

W. P. & J. B. HARRIS, *for Appellant.*